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WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 11, 2012
9 a.m.-12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008



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Federal Register

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

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

DEPARTMENT OF ENERGY

10 CFR Parts 430 and 431

[Docket Number EERE-2010-BT-NOA-0028]

RIN 1904-AC24

Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Notice of Policy Amendment Regarding Full-Fuel-Cycle Analyses

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

ACTION: Notice of policy amendment.

SUMMARY: On August 18, 2011, the U.S. Department of Energy (DOE) announced its intention to use full-fuel-cycle (FFC) measures of energy use and greenhouse gas and other emissions in the national impact analyses and environmental assessments included in future energy conservation standards rulemakings. While DOE stated in that notice that it intended to use the Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation (GREET) model to conduct the analyses, the Department also said that it would review alternative methods, including the use of the National Energy Modeling System (NEMS) developed by DOE's Energy Information Administration (EIA). After evaluating both NEMS and GREET, DOE has determined that NEMS is ultimately a more appropriate tool to calculate FFC measures of energy use and greenhouse gas and other emissions. Therefore, DOE intends to use the NEMS model, rather than the GREET model, as the basis for deriving the energy and emission multipliers used to conduct FFC analyses in support of future energy conservation standards rulemakings. The public is free to send in comments on this policy amendment at any time. DOE will address comments on this

policy amendment in the first notice of proposed rulemaking (NOPR) to utilize the NEMS-based approach for the FFC.

DATES: August 17, 2012.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE-2011-BT-NOA-0028, by any of the following methods:

- **Email:** To *FFC-2010-NOA-0028-ee.doe.gov*. Include EERE-2011-BT-NOA-0028 in the subject line of the message.
- **Mail:** Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, Notice of Policy Amendment to Full Fuel Cycle Analyses, EERE-2011-BT-NOA-0028, 1000 Independence Avenue SW., Washington, DC 20585-0121. Phone: (202) 586-2945. If possible, please submit all items on a CD. It is not necessary to include printed copies. Hand Delivery/Courier: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Phone: (202) 586-2945. If possible, please submit all items on a CD. It is not necessary to include printed copies. Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-9870. Email: Jeremy.Dommu@ee.doe.gov.

Ms. Ami Grace-Tardy, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-5709. Email: Ami.Grace-Tardy@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction and Discussion

On August 18, 2011, the U.S. Department of Energy (DOE) published a policy statement announcing its intention to use full-fuel-cycle (FFC) measures of energy use and greenhouse gas and other emissions in the national impact analyses and environmental assessments included in future energy conservation standards rulemakings. (76 FR 51281) While DOE stated in that notice that it intended to use the Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation (GREET) model to conduct the analysis, the Department also said that it would, from time to time, review alternative approaches to estimating these factors, including use of the National Energy Modeling System (NEMS) developed by DOE's Energy Information Administration (EIA). (76 FR 51287) As indicated in the FFC policy statement notice, NEMS would continue to be utilized by DOE to estimate primary (or site) energy consumption for national impact analyses and environmental assessments, while GREET would be used to develop the energy and emission multipliers necessary to convert the NEMS-based primary energy and emission impacts into FFC values. Because of concerns about the potential effects of certain inconsistencies in the underlying assumptions and forecasts used by GREET and NEMS, subsequent to publication of the policy statement, DOE initiated a further review to determine whether NEMS (rather than GREET) might be used to develop the necessary FFC multipliers.

During this review process, DOE examined a new methodology to develop FFC multipliers using the data and projections generated by NEMS and published in EIA's Annual Energy Outlook (AEO). While the AEO does not provide direct calculations of FFC metrics, it does provide extensive information about the energy system, including projections of future oil, natural gas and coal supply, energy use for oil and gas field and refinery operations, and fuel consumption and emissions related to electric power production. This information is used to define a set of parameters representing the amount of energy used in the fuel production chain. For example, the petroleum fuel production chain consists of extraction, separation, refining and distribution of final

products to the end user. Each of these process steps consumes energy in the form of diesel or fuel oil, natural gas, or grid electricity. The data are used to estimate an intensity parameter for each fuel type, which is equal to the total amount of that fuel needed to produce one unit of the final product. The FFC energy and emissions factors are defined as a function of these parameters, using a formula that is described in detail in: “A Mathematical Analysis of Full Fuel Cycle Energy Use”; [<http://www.sciencedirect.com/science/article/pii/S0360544211006803>]¹ Energy, Volume 37, Issue 1, January 2012, Pages 698–708;

By using the FFC multipliers derived from NEMS, DOE would be able to ensure that the assumptions and inputs used in FFC analyses are consistent with the assumptions and inputs used to estimate primary energy savings and emissions impacts. In addition, this approach would make it easier for DOE to update the multipliers with each new edition of the AEO. The GREET model, in contrast, uses a representation of the energy production system to develop its own internal projections, which inevitably will differ some from those in the AEO.

Based on this assessment, DOE is proposing to use this NEMS-based approach to estimating the FFC energy and emission impacts of alternative energy conservation standards levels in energy conservation standards rulemakings that reach the notice of proposed rulemaking (NOPR) stage after August 17, 2012. Rulemakings that do not reach the NOPR stage before August 17, 2012 will continue to use the estimates of primary energy and emission impacts described in the notices of proposed rulemaking. DOE has not used the GREET model to estimate FFC energy and emission impacts in any past or current rulemakings but has started to use the NEMS-based approach to estimating these impacts in several energy conservation standards preliminary analyses.

II. Public Participation

DOE invites all interested parties to submit comments on this issue in writing at any time. In addition, interested parties will have an opportunity to review and comment on the specific methodologies employed by DOE to calculate FFC energy and emission impacts in NOPRs. See the **ADDRESSES** section of this notice for

more information on how to submit a comment.

III. Procedural Issues and Regulatory Review

A. Review Under the National Environmental Policy Act 1969

DOE has determined that this policy amendment falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this policy amendment describes methods for data analysis and how DOE plans to incorporate such data analysis into future energy conservation standards. For this reason, and because the policy amendment does not establish an energy conservation standard or take any action that might have an impact on the environment, it is covered by the Categorical Exclusion A9 under 10 CFR part 1021, subpart D. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

B. Review Under the Information Quality Bulletin for Peer Review

In consultation with the Office of Science and Technology Policy (OSTP), OMB issued on December 16, 2004, its “Final Information Quality Bulletin for Peer Review” (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the government's scientific information. Under the Bulletin, NEMS is “influential scientific information,” which the Bulletin defines as “scientific information that the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.” 70 FR 2664, 2667 (Jan. 14, 2005). The NEMS model, which is in the public domain, has been reviewed through its development and applications over the past 18 years.

IV. Approval of the Office of the Assistant Secretary

The Assistant Secretary of DOE's Office of Energy Efficiency and Renewable Energy has approved publication of this final policy.

Issued in Washington, DC, on August 9, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–20122 Filed 8–16–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0423; Directorate Identifier 2011–NM–095–AD; Amendment 39–17156; AD 2012–16–09]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding two existing airworthiness directives (AD) for all Embraer S.A. Model ERJ 170 and ERJ 190 airplanes. Those ADs currently require revising the airplane flight manual (AFM) to introduce limitations for the use of auxiliary power unit (APU) bleed and to prohibit dispatch with a failed air management system (AMS) controller card. This new AD requires replacing the AMS controller processor module with one containing new software, and a new AFM revision. This AD was prompted by reports of the possible loss of automatic activation of the engine inlet ice protection system. We are issuing this AD to prevent the possibility of a right-hand (RH) engine compressor stall after the APU becomes the active bleed source for the left side, which may result in an engine failure; and to prevent the intermittent communication failure between the AMS controller cards and both secondary power distribution assemblies (SPDAs), which could lead to the loss of automatic activation of the engine inlet ice protection system when flying in icing conditions, which could result in ice accretion in the engine inlet and subsequent dual engine failure.

DATES: This AD becomes effective September 21, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 21, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD

¹ Coughlin, Katie (2012). A Mathematical Analysis of Full Fuel Cycle Energy Use. Energy, Volume 37, Issue 1, January 2012, Pages 698–708.

as of September 9, 2010 (75 FR 52238, August 25, 2010).

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

FOR FURTHER INFORMATION CONTACT: Cindy Ashforth, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-3356; phone: 425-227-2768; fax: 425-227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 1, 2012 (77 FR 25644), and proposed to supersede AD 2010-07-04, Amendment 39-16248 (75 FR 14333, March 25, 2010); and AD 2010-18-01, Amendment 39-16414 (75 FR 52238, August 25, 2010). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

This [Agência Nacional de Aviação Civil (ANAC)] AD results from the possibility of loss of automatic activation of the engine inlet ice protection system when flying in ice condition. Even though the failure is announced by the caution messages “A-I Eng 1 Fail” [and] “A-I Eng 2 Fail”, if the engines inlet ice protection system is not manually activated, ice may accrete in the engine inlet and causes engine to shut down.

Also there is the possibility of right hand (RH) engine compressor to stall after the Auxiliary Power Unit (APU) becomes the active bleed source for the left side, following left hand (LH) engine failure, under a condition where both engines are close to idle, the APU is running, and the APU bleed button is pushed in (automatic position).

The required actions include replacing the AMS controller processor module with one containing new software and revising the Limitations section of the AFM. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The Air Line Pilots Association, International (ALPA) stated that it fully supports the NPRM (77 FR 25644, May 1, 2012).

Explanation of Change Made to the AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

We reviewed the available data, considered the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 25644, May 1, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 25644, May 1, 2012).

Costs of Compliance

We estimate that this AD will affect about 253 products of U.S. registry.

The actions that are required by AD 2010-07-04, Amendment 39-16248 (75 FR 14333, March 25, 2010); and AD 2010-18-01, Amendment 39-16414 (75 FR 52238, August 25, 2010); and that are retained in this AD take about 1 work-hour per product, at an average labor rate of \$85 per work-hour. Based on these figures, the estimated cost of the currently required actions is \$85 per product.

We estimate that it will take about 1 work-hour per product to comply with the new basic requirements of this AD. The average labor rate is \$85 per work-hour. Required parts will cost about \$35 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$30,360, or \$120 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 25644, May 1, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive AD 2010-07-04, Amendment 39-16248 (75 FR 14333, March 25, 2010); and AD 2010-18-01, Amendment 39-16414 (75 FR 52238, August 25, 2010); and adding the following new AD:

2012-16-09 Embraer S.A.: Amendment 39-17156, Docket No. FAA-2012-0423; Directorate Identifier 2011-NM-095-AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 21, 2012.

(b) Affected ADs

This AD supersedes AD 2010-07-04, Amendment 39-16248 (75 FR 14333, March 25, 2010); and AD 2010-18-01, Amendment 39-16414 (75 FR 52238, August 25, 2010).

(c) Applicability

This AD applies to Embraer S.A. Model ERJ 170-100 LR, -100 STD, -100 SE., and -100 SU airplanes; Model ERJ 170-200 LR, -200 SU, and -200 STD airplanes; Model ERJ 190-100 STD, -100 LR, -100 ECJ, and -100 IGW airplanes; and Model ERJ 190-200 STD, -200 LR, and -200 IGW airplanes; certificated in any category; all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 21: Air Conditioning.

(e) Reason

This AD was prompted by reports of the possible loss of automatic activation of the engine inlet ice protection system. We are issuing this AD to prevent the possibility of a right-hand (RH) engine compressor stall after the auxiliary power unit (APU) becomes the active bleed source for the left side, which may result in an engine failure; and to prevent the intermittent communication failure between the air management system (AMS) controller cards and both secondary power distribution assemblies (SPDAs), which could lead to the loss of automatic activation of the engine inlet ice protection system when flying in icing conditions, which could result in ice accretion in the engine inlet and subsequent dual engine failure.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Retained Revision for Certain Airplanes

This paragraph restates the requirements of paragraph (g) of AD 2010-07-04, Amendment 39-16248 (75 FR 14333, March 25, 2010). For airplanes equipped with AMS

controller cards having part number (P/N) 1001050-1-YYY or 1001050-2-YYY containing software version Black Label 08 or lower installed: Within 10 days after April 9, 2010 (the effective date of AD 2010-07-04), revise the Limitations section of the AFM to include the following statement. This may be done by inserting a copy of this AD in the AFM. Doing the actions required by paragraph (i) of this AD terminates the requirements of this paragraph.

Dispatch with the message 'RECIRC SMK DET FAIL' displayed on the ground is prohibited unless troubleshooting action confirms the message has not been triggered due to a failure of an AMS controller card.

Note 1 to paragraph (g) of this AD: When a statement identical to that in paragraph (g) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(h) Retained AFM Revision for All Airplanes

This paragraph restates the requirements of paragraph (g) of AD 2010-18-01, Amendment 39-16414 (75 FR 52238, August 25, 2010). For all airplanes: Within 14 days after September 9, 2010 (the effective date of AD 2010-18-01), revise the Limitations section of the applicable AFM to include the information in EMBRAER Operational Bulletin 170-001/09, Revision 1, dated February 10, 2010, as specified in the operational bulletin. This operational bulletin introduces limitations for the use of APU bleed. Doing the actions required by paragraph (i) of this AD terminates the requirements of this paragraph.

Note 2 to paragraph (h) of this AD: This may be done by inserting a copy of EMBRAER Operational Bulletin 170-001/09, Revision 1, dated February 10, 2010, into the AFM. When this operational bulletin has been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in the operational bulletin, and the operational bulletin can be removed.

(i) New Requirement of This AD: Load Software or Replace AMS Controller Module

Within 3,300 flight hours after the effective date of this AD: Replace existing Hamilton Sundstrand AMS controller processor modules (slots 18 and 25) P/N 1001050-1-YYY, 1001050-2-YYY, 1001050-3-YYY, or 1001050-4-YYY, with a new or serviceable AMS controller processor module containing software version Black Label-11, or later approved version of the software, in accordance with the Accomplishment Instructions of Embraer Service Bulletin 170-21-0049, dated November 29, 2010 (for Model ERJ 170 airplanes); Embraer Service Bulletin 190-21-0035, dated November 29, 2010 (for Model ERJ 190 airplanes); or Embraer Service Bulletin 190LIN-21-0016, dated February 23, 2011 (for Model ERJ 190-100 ECJ airplanes).

(j) Definition

For the purposes of this AD, "later-approved version of the software," is defined

as software having design approval holder (DAH) design changes that have been approved after the publication of Embraer Service Bulletin 170-21-0049, dated November 29, 2010 (for Model ERJ 170 airplanes); Embraer Service Bulletin 190-21-0035, dated November 29, 2010 (for Model ERJ 190 airplanes); and Embraer Service Bulletin 190LIN-21-0016, dated February 23, 2011 (for Model ERJ 190-100 ECJ airplanes).

(k) New Requirement of This AD: Revise Limitations Section of AFM

After doing the actions required by paragraph (i) of this AD, before further flight, revise the Limitations section of the applicable AFM by removing the limitation required by paragraph (g) of this AD and the revision required by paragraph (h) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Cindy Ashforth, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-3356; phone: 425-227-2768; fax: 425-227-1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(m) Related Information

Refer to MCAI Brazilian ADs 2011-05-01 and AD 2011-05-02, both dated May 9, 2011, and the service information specified in paragraphs (m)(1), (m)(2), (m)(3) and (m)(4) of this AD, for related information.

(1) EMBRAER Operational Bulletin 170-001/09, Revision 1, dated February 10, 2010.

(2) Embraer Service Bulletin 170-21-0049, dated November 29, 2010.

(3) Embraer Service Bulletin 190-21-0035, dated November 29, 2010.

(4) Embraer Service Bulletin 190LIN-21-0016, dated February 23, 2011.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this

paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on September 21, 2012.

(i) Embraer Service Bulletin 170-21-0049, dated November 29, 2010.

(ii) Embraer Service Bulletin 190-21-0035, dated November 29, 2010.

(iii) Embraer Service Bulletin 190LIN-21-0016, dated February 23, 2011.

(4) The following service information was approved for IBR on September 9, 2010 (75 FR 52238, August 25, 2010).

(i) EMBRAER Operational Bulletin 170-001/09, Revision 1, dated February 10, 2010.

(ii) Reserved.

(5) For service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227-901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927-5852 or +55 12 3309-0732; fax +55 12 3927-7546; email distrib@embraer.com.br; Internet <http://www.flyembraer.com>.

(6) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

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

Issued in Renton, Washington, on July 31, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012-19396 Filed 8-16-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2012-0659; Directorate Identifier 2011-SW-061-AD; Amendment 39-17101; AD 2012-12-21]

RIN 2120-AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that was published in the *Federal Register*. That

AD applies to Eurocopter Deutschland GmbH Model MBB-BK 117 C-2 helicopters. A page reference of the rotorcraft flight manual in the Required Actions section, paragraph (e)(1)(i), is incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: This correction is effective August 17, 2012. The effective date for AD 2012-12-21 remains July 10, 2012. The last date for submitting comments to the final rule; request for comments remains August 24, 2012.

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

FOR FURTHER INFORMATION CONTACT: George Schwab, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, TX 76137, telephone (817) 222-5110, email: george.schwab@faa.gov.

SUPPLEMENTARY INFORMATION: Airworthiness Directive 2012-12-21, Amendment 39-17101 (77 FR 37777, June 25, 2012), currently includes the following paragraph (e)(1)(i) in the Required Actions section:

“(i) “Emergency and Malfunction Procedures”: pages 3-3 and 3-4, and”

As published, the reference to page 3-4 is incorrect. The correct reference is to page 3-3a.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the *Federal Register*.

Correction of Regulatory Text

§ 39.13 [Corrected]

In the *Federal Register* of June 25, 2012, on page 37779 in the second column, paragraph (e)(1)(i) of AD 2012-12-21 is corrected to read as follows:

* * * * *

(i) “Emergency and Malfunction Procedures”: pages 3-3 and 3-3a, and

* * * * *

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

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012-20177 Filed 8-16-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2012-0291; Directorate Identifier 2011-NM-168-AD; Amendment 39-17158; AD 2012-16-11]

RIN 2120-AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A318-112 and -121 airplanes; Model A319-111, -112, -115, -132, and -133 airplanes; Model A320-214, -232, and -233 airplanes; and Model A321-211, -212, -213, and -231 airplanes. This AD was prompted by reports that some nuts installed on the wing, including on primary structural elements, were found cracked. This AD requires inspecting to determine if certain nuts are installed or cracked, and replacing the affected nuts if necessary. We are issuing this AD to detect and correct missing and cracked nuts, which could result in the structural integrity of the airplane wings being impaired.

DATES: This AD becomes effective September 21, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 21, 2012.

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

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-1405; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 21, 2012 (77 FR 16492). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During structural part assembly in Airbus production line, some [wing] nuts Part Number (P/N) ASNA2531-4 were found cracked. Investigations were performed to determine the batches of the affected nuts and had revealed that these nuts have been installed in production on the fuel tank area of aeroplanes listed in the applicability section of this [European Aviation Safety Agency (EASA)] AD.

Static, fatigue and corrosion tests were performed, which demonstrated that no immediate maintenance action is necessary. However, a large number of these nuts are fitted on primary structural elements, which could have long-term consequences.

This condition, if not corrected, could impair the structural integrity of the affected aeroplanes.

For the reasons described above, this [EASA] AD requires a detailed inspection of the affected nuts [for cracking and to determine if nuts are installed], associated corrective actions, depending on findings, and replacement of the affected P/N ASNA2531-4 nuts with new ones, having the same P/N [and reporting to Airbus the inspection results].

This [EASA] AD has been revised to reduce the Applicability. Since no spare nuts have been delivered to operators for installation on Airbus aeroplanes, only the Models and MSN [manufacturer's serial numbers] listed in the Airbus SB are affected by this [EASA] AD.

You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Request To Reference Latest Service Information

Airbus stated that they have issued Revision 02, dated April 6, 2012, of Mandatory Service Bulletin A320-57-1153, including Appendices 01, 02, and 03. Airbus also requested that we revise the NPRM (77 FR 16492, March 21, 2012) to give credit for Airbus Service Bulletin A320-57-1153, Revision 01, including Appendices 01, 02, and 03, dated June 28, 2010 (referenced as the appropriate source of service information for the actions in paragraph (g) of the NPRM).

We agree with the commenter. We reviewed Airbus Mandatory Service Bulletin A320-57-1153, Revision 02, including Appendices 01, 02, and 03,

dated April 6, 2012. Revision 02 corrects a part number and revises the title, certain illustrations, and the test job set-up. We also agree, as Revision 02 of that service bulletin states, that there is no additional work required by Revision 02 of this service bulletin for airplanes modified using previous revisions of this bulletin. We have changed paragraphs (g) and (h) of this AD to refer to Airbus Mandatory Service Bulletin A320-57-1153, Revision 02, including Appendices 01, 02, and 03, dated April 6, 2012, and have changed paragraph (i) of this AD ("Credit for Previous Actions") to include Airbus Service Bulletin A320-57-1153, Revision 01, including Appendices 01, 02, and 03, dated June 28, 2010.

Request To Revise "Costs of Compliance" Section

Airbus requested that we revise the "Costs of Compliance" section of the NPRM (77 FR 16492, March 21, 2012) to correctly state the number of U.S.-registered airplanes affected by this AD, which it noted as 22 airplanes rather than 170 airplanes as stated in the NPRM.

We agree that 22 is the correct number of U.S.-registered airplanes affected by this AD. We have changed the "Costs of Compliance" section of this AD accordingly.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously—except for minor editorial changes. We have determined that these changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 16492, March 21, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 16492, March 21, 2012).

Costs of Compliance

We estimate that this AD will affect about 22 products of U.S. registry. We also estimate that it will take up to 15 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$28,050, or \$1,275 per product.

In addition, we estimate that any necessary follow-on actions would take about 143 work-hours and require parts costing \$0, for a cost of \$12,155 per product. We have no way of

determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 16492, March 21, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES**

section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new AD:

2012–16–11 Airbus: Amendment 39–17158. Docket No. FAA–2012–0291; Directorate Identifier 2011–NM–168–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 21, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A318–112 and –121 airplanes; Model A319–111, –112, –115, –132, and –133 airplanes; Model A320–214, –232, and –233 airplanes; and Model A321–211, –212, –213, and –231 airplanes; certificated in any category; serial numbers 3359, 3361, 3362, 3365, 3366, 3368, 3370 through 3508 inclusive, 3510 through 3519 inclusive, 3522, 3523, 3525, 3527, 3529, 3530, 3533, 3534, 3537, 3539, 3542, 3544, 3546, 3548, 3552, and 3555.

(d) Subject

Air Transport Association (ATA) of America Code 57: Wings.

(e) Reason

This AD was prompted by reports that some nuts installed on the wing, including on primary structural elements, were found cracked. We are issuing this AD to detect and correct missing and cracked nuts, which could result in the structural integrity of the airplane wings being impaired.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Inspection/Replacement of Fuel Tank Nuts

Within the compliance times specified in paragraph (g)(1) or (g)(2) of this AD, whichever occurs later: Do a detailed inspection of the fuel tank areas of the wings to determine if nuts with part number (P/N)

ASNA2531–4 are installed or cracked, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–57–1153, Revision 02, including Appendices 01, 02, and 03, dated April 6, 2012. Before further flight, replace any missing or cracked nut with P/N ASNA2531–4 with a new P/N ASNA2531–4 nut, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–57–1153, Revision 02, including Appendices 01, 02, and 03, dated April 6, 2012.

(1) Within 6 years after the first flight of the airplane.

(2) Within 6 years after the most recent scheduled fuel tank inspection, or within 6 months after the effective date of this AD, whichever occurs later.

(h) Inspection Report

Submit a report of the findings of the inspection required by paragraph (h) of this AD to Airbus, at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD. Submit the report using “Appendix 01—Inspection Report,” of Airbus Mandatory Service Bulletin A320–57–1153, Revision 02, dated April 6, 2012.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 90 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (i)(1) or (i)(2) of this AD.

(1) Airbus Service Bulletin A320–57–1153, including Appendices 01, 02, and 03, dated February 9, 2010.

(2) Airbus Service Bulletin A320–57–1153, Revision 01, including Appendices 01, 02, and 03, dated June 28, 2010.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC

approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(k) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2011–0121R1, dated July 13, 2011; and Airbus Mandatory Service Bulletin A320–57–1153, Revision 02, including Appendices 01, 02, and 03, dated April 6, 2012; for related information.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise.

(i) Airbus Mandatory Service Bulletin A320–57–1153, Revision 02, including Appendices 01, 02, and 03, dated April 6, 2012.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email: account.airworth-eas@airbus.com; Internet <http://www.airbus.com>.

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–

6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on August 3, 2012.

Ali Bahrami,
Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 2012-19815 Filed 8-16-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2012-0490; Directorate Identifier 2012-NM-066-AD; Amendment 39-17159; AD 2012-16-12]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 707 airplanes, and Model 720 and 720B series airplanes. This AD was prompted by reports of cracking of the midspar fittings, and of the engine and nacelle strut separating from the airplane. This AD requires performing a detailed inspection of the midspar fittings of the nacelle strut to confirm that the correct part number is installed, and installing the correct part number if necessary; performing repetitive high frequency eddy current (HFEC) inspections of the midspar fittings of the nacelle strut for cracks, and repair if necessary; and performing repetitive general visual inspections of the nacelle struts to verify that the nacelle strut has not drooped below its normal position, applying the droop stripe to the nacelle strut and

sailboat fairing if necessary, and performing repair if necessary. We are issuing this AD to detect and correct cracking of the midspar fitting, which could result in separation of the nacelle strut and engine from the airplane while in flight, and consequent loss of controllability of the airplane.

DATES: This AD is effective September 21, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 21, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM-120S, FAA,

Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: (425) 917-6577; fax: (425) 917-6590; email: Berhane.Alazar@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on May 30, 2012 (77 FR 31762). That NPRM proposed to require performing a detailed inspection of the midspar fittings of the nacelle strut to confirm that the correct part number is installed, and installing the correct part number if necessary; performing repetitive HFEC inspections of the midspar fittings of the nacelle strut for cracks, and repair if necessary; and performing repetitive general visual inspections of the nacelle struts to verify that the nacelle strut has not drooped below its normal position, applying the droop stripe to the nacelle strut and sailboat fairing if necessary, and performing repair if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received. Boeing and the National Transportation Safety Board support the NPRM.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 11 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed inspection, repetitive HFEC inspections, and repetitive general visual inspections of the midspar fittings of the nacelle strut.	23 work-hours × \$85 per hour = \$1,955, per inspection.	\$0	\$1,955, per inspection.	\$21,505, per inspection.

We estimate the following costs to do any necessary repairs that would be

required based on the results of the inspections. We have no way of

determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Install the correct part number.	130 work-hours × \$85 per hour = \$11,050	\$7,867 × 4 = \$31,468	\$42,518

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–16–12 The Boeing Company:
Amendment 39–17159; Docket No. FAA–2012–0490; Directorate Identifier 2012–NM–066–AD.

(a) Effective Date

This AD is effective September 21, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 707–100 long body, –200, –100B long body, and –100B short body series airplanes; Model 707–300, –300B, –300C, and –400 series airplanes; and Model 720 and 720B series airplanes; certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 54, Nacelles/Pylons.

(e) Unsafe Condition

This AD was prompted by reports of cracking of the midspar fittings and of the engine and nacelle strut separating from the airplane. We are issuing this AD to detect and correct cracking of the midspar fitting, which could result in separation of the nacelle strut and engine from the airplane while in flight, and consequent loss of controllability of the airplane.

(f) Compliance

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

(g) Detailed Inspection

Within 120 days after the effective date of this AD: Do a detailed inspection of the midspar fittings of engine numbers 2 and 3 nacelle struts to confirm that the correct part number is installed, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012 (which is not incorporated by reference in this AD). If any incorrect part number is found: Before further flight, install the correct part number, in accordance with the Accomplishment Instructions of Boeing

707 Alert Service Bulletin A3537, dated January 30, 2012.

Note 1 to paragraph (g) of this AD: Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012, refers to Boeing 707/720 Service Bulletin 3183, Revision 5, dated September 16, 1993 (which is not incorporated by reference in this AD), as an additional source of guidance for high frequency eddy current (HFEC) inspections of the midspar fittings of engine numbers 2 and 3 nacelle struts for cracks.

(h) HFEC Inspection

At the applicable times specified in paragraph 1.E., "Compliance," of Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012, except as provided in paragraph (j) of this AD: Do an HFEC inspection of the midspar fittings of engine numbers 2 and 3 nacelle struts for cracks, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012, except as provided by paragraph (k) of this AD. If any crack is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (m) of this AD. Thereafter, repeat the inspection at the applicable intervals specified in paragraph 1.E., "Compliance," of Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012.

(i) General Visual Inspection of the Nacelle Struts of Engine Numbers 1, 2, 3, and 4

At the applicable times specified in paragraph 1.E., "Compliance," of Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012, except as provided in paragraph (j) of this AD: Do a general visual inspection of the nacelle struts of engine numbers 1, 2, 3, and 4 to verify that the nacelle strut has not drooped below its normal position, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012. Thereafter, repeat the inspection at the applicable intervals specified in paragraph 1.E., "Compliance," of Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012.

(1) If any nacelle strut has drooped below its normal position: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(2) If any nacelle strut has not drooped below its normal position, and no droop stripe specified in Boeing 707/720 Service Bulletin 3377, dated November 21, 1979 (which is not incorporated by reference in this AD) has been applied: At the applicable times in paragraph 1.E., "Compliance," of Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012, except as provided

in paragraph (j) of this AD: Apply the droop stripe to the nacelle strut and sailboat fairing, on each side of engine numbers 1, 2, 3, and 4 nacelle struts, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012.

(j) Exception to the Compliance Times

Where Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012, specifies a compliance time based on "the original issue date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(k) Exception to the Service Information

Where Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012, refers to "Manual 707, 720 NDT Part 6, 51-00-00 Figure 24 as an accepted procedure" for the HFEC inspection, this AD requires that the inspection be done in accordance with Figure 24, Steel Part Surface Inspection (Impedance Plane Display), Subject 51-00-00, Structural-General, of Part 6, Eddy Current, of the Boeing 707/720 Nondestructive Test Manual, Document D6-48023, Revision 120, dated March 15, 2012.

(l) Credit for Previous Actions

This paragraph provides credit for the installation of the engine droop lines required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using Boeing 707/720 Service Bulletin 3377, dated November 21, 1979 (which is not incorporated by reference in this AD).

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: 9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(n) Related Information

(1) For more information about this AD, contact Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind

Avenue SW., Renton, WA 98057-3356; phone: (425) 917-6577; fax: (425) 917-6590; email: Berhane.Alazar@faa.gov.

(2) For service information identified in this AD, that is not incorporated by reference in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

(o) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012.

(ii) Figure 24, Steel Part Surface Inspection (Impedance Plane Display), Subject 51-00-00, Structural-General, of Part 6, Eddy Current, of the Boeing 707/720 Nondestructive Test Manual, Document D6-48023, Revision 120, dated March 15, 2012. The revision level of this document is identified on only the manual revision Transmittal Sheet.

(3) For The Boeing Company service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>.

(4) You may view this service information at FAA, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

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

Issued in Renton, Washington, on August 3, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012-19819 Filed 8-16-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2010-0517; Directorate Identifier 2009-SW-73-AD; Amendment 39-17137; AD 2012-15-08]

RIN 2120-AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S-76A helicopters to require modifying the electric rotor brake (ERB) and inserting changes into the "Normal Procedures" and "Emergency Procedures" sections of the Rotorcraft Flight Manual (RFM). This AD was prompted by a fire in the main gearbox area as a result of a hot electric rotor brake (ERB). The actions are intended to prevent overheating of the ERB, ignition of the ERB hydraulic fluid, a fire in the main gearbox area, and subsequent loss of control of the helicopter.

DATES: This AD is effective September 21, 2012.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of September 21, 2012.

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

Examining the AD Docket: You may examine the AD docket on the Internet at <http://www.regulations.gov>, or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800-647-5527) is U.S. Department of Transportation, Docket Operations Office, M-30, West Building Ground

Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Caspar Wang, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238-7799; email caspar.wang@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

A number of service documents and ADs have been issued relating to the ERB on this and similar model helicopters. AD 82-17-03, issued July 30, 1982 (47 FR 35469, August 16, 1982), requires a puck-to-disc inspection of rotor brake, P/N 76363-09101-101, and modification of the ERB system including, among other modifications, installation of a warning relay by following Sikorsky Customer Service Bulletin No. 76-66-10B, Revision 2, dated November 25, 1981 (pages 1 and 9 through 13 of the service bulletin are dated November 25, 1981 and pages 2 through 8 are dated July 30, 1981). AD 2003-04-15, issued February 14, 2003 (68 FR 8994, February 27, 2003), requires inspecting certain rotor brake discs for cracks that resulted from improper heat treating of the disc.

On October 26, 2011, at 76 FR 66205, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Sikorsky Model S-76A helicopters with a different part-numbered ERB, part number (P/N) 76363-09100-012, installed. That NPRM proposed to require, within 120 days, modifying the ERB by installing and operationally testing the parts contained in an ERB warning relay kit (P/N 76070-55023-011), an ERB circuit modification kit (P/N 76070-55033-012), and an ERB modification kit (P/N 76070-55207-011). That NPRM was prompted by a reported incident of a fire occurring in an ERB installed on a Model S-76A helicopter in Brazil. The proposed requirements were intended to prevent overheating of the ERB assembly, ignition of the ERB hydraulic fluid, fire in the main gearbox area, and subsequent loss of control of the helicopter.

Related Service Information

We have reviewed the following documents from Sikorsky:

- Customer Service Bulletin No. 76-66-10B, Revision 2, dated November 25, 1981 (pages 1 and 9 through 13 of the service bulletin are dated November 25, 1981 and pages 2 through 8 are dated

July 30, 1981), which specifies installing an ERB warning relay kit;

- Customer Service Notice No. 76-113, dated June 1, 1983, which specifies installing an ERB circuit breaker and modification kit;
- Alert Service Bulletin No. 76-66-48B, Revision B, dated July 8, 2009, which specifies a one-time installation of an ERB modification kit containing two other kits and several modifications; and
- RFM Supplement No. 41, Part 1, approved September 6, 2005, which revises the information in the basic RFM normal and emergency procedures sections when the ERB system is modified.

Comments

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

FAA's Determination

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

Costs of Compliance

We estimate that this AD will affect 180 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. It will take about 38 work-hours per helicopter to perform the modifications and operational tests at an average labor rate of \$85 per work-hour. Required parts will cost \$13,300 per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be \$2,975,400 for the fleet.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in

air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
- (3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new Airworthiness Directive (AD):

2012-15-08 Sikorsky Aircraft Corporation (Sikorsky): Amendment 39-17137; Docket No. FAA-2010-0517; Directorate Identifier 2009-SW-73-AD.

(a) Applicability

This AD applies to Model S-76A helicopters, with an electric rotor brake

(ERB), part number (P/N) 76363-09100-012, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as an overheated ERB. This condition could result in ignition of hydraulic fluid, fire in the main gearbox area, and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective September 21, 2012.

(d) Compliance

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

(e) Required Actions

(1) Within 120 days, modify the ERB by installing:

(i) Warning relay system parts contained in modification kit, P/N 76070-55023-011, and operationally testing the ERB system in accordance with paragraphs 2.A. through 2.F., of Sikorsky Customer Service Bulletin No. 76-66-10B, Revision 2, dated November 25, 1981 (pages 1 and 9 through 13 of the service bulletin are dated November 25, 1981 and pages 2 through 8 are dated July 30, 1981);

(ii) Circuit breaker and diodes contained in ERB circuit modification kit, P/N 76070-55033-012, and operationally testing the ERB system in accordance with paragraph B. through F. of Sikorsky Customer Service Notice 76-113, dated June 1, 1983; and

(iii) Manifold, relay box, junction box, right-hand relay panel, and wiring harness parts contained in ERB modification kit, P/N 76070-55207-011, and operationally testing the ERB system in accordance with paragraphs 3.B. through 3.I. of the Accomplishment Instructions of Sikorsky Alert Service Bulletin No. 76-66-48B, Revision B, dated July 8, 2009.

(2) After accomplishing paragraph (e)(1) of this AD, insert into the Sikorsky Rotorcraft Flight Manual (RFM) the changes to the "Normal Procedures (Part 1, Section II)" and "Emergency Procedures (Part 1, Section III)" contained in Sikorsky RFM, Supplement No. 41, approved September 6, 2005.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Caspar Wang, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238-7799; email caspar.wang@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) Subject

Joint Aircraft Service Component (JASC)
Code: 6321, Main Rotor Brake.

(h) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Sikorsky Customer Service Bulletin No. 76-66-10B, Revision 2, dated November 25, 1981 (pages 1 and 9 through 13 of the service bulletin are dated November 25, 1981 and pages 2 through 8 are dated July 30, 1981);

(ii) Sikorsky Customer Service Notice No. 76-113, dated June 1, 1983;

(iii) Sikorsky Alert Service Bulletin No. 76-66-48B, Revision B, dated July 8, 2009; and

(iv) Sikorsky Rotorcraft Flight Manual Supplement No. 41, Part 1, approved September 6, 2005.

(3) For Sikorsky service information identified in this AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT 06614; telephone (800) 562-4409; email tsslibrary@sikorsky.com; or at <http://www.sikorsky.com>.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(5) You may also view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Fort Worth, Texas, on July 20, 2012.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012-20102 Filed 8-16-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2011-0438; **Airspace**
Docket No. 11-AWA-4]

RIN 2120-AA66

Amendment to Class B Airspace; Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Salt Lake City, UT, Class B airspace to

contain aircraft conducting Instrument Flight Rules (IFR) instrument approach procedures to Salt Lake City International Airport (SLC), Salt Lake City, UT. The FAA is taking this action to improve the flow of air traffic, enhance safety, and reduce the potential for midair collision, while accommodating the concerns of airspace users. Further, this effort supports the FAA's national airspace redesign goal of optimizing terminal and en route airspace to reduce aircraft delays and improve system capacity. Minor corrections have been made to the geographic coordinates of the affected legal descriptions, as well as editorial corrections.

DATES: *Effective Date:* 0901 UTC, October 18, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace, Regulations, and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

History

On August 24, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify the Salt Lake City, UT, Class B airspace area (76 FR 52905). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Eight written comments were received in response to the NPRM. All comments received were considered before making a determination on the final rule.

Class B airspace designations are published in paragraph 3000 of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class B airspace designations listed in this document will be subsequently published in the Order.

Discussion of Comments

Four commenters opposed the vertical extension of the Salt Lake City Class B airspace from 10,000 feet MSL to 12,000 feet MSL without mitigating impacts on VFR operations. They challenged the operational and safety benefit of raising the ceiling based on no actual mid-air collision or conflict resolution data having been provided to support taking this action.

This Class B airspace area modification was initiated to ensure containment of large turbine-powered aircraft within Class B airspace. Raising the ceiling of the Salt Lake City Class B airspace to 12,000 feet MSL is necessary to contain the instrument procedures and associated traffic patterns supporting those procedures at SLC. In addition to the approximately 1,000 IFR operations a day operating at and below 12,000 feet MSL within 30 miles of SLC, and the Ad hoc Committee's endorsement of the 12,000 feet MSL ceiling, the raised ceiling is based on operational necessity.

Because SLC is situated in a valley with mountainous terrain to the east and southeast, and southwest, there is only one traffic pattern west of SLC, regardless of traffic flow. Departures from SLC must also climb in the same airspace to the west of SLC before turning on course to clear mountainous terrain. Departing aircraft climb to 10,000 feet MSL to clear the terrain surrounding SLC and remain separated from arrival aircraft established at or descending to the downwind traffic pattern altitude of 11,000 feet MSL. Every arrival into SLC must enter the downwind pattern west of the airport. During periods of high traffic volume, or when incompatible aircraft are operating, air traffic control must also use a 12,000-foot MSL downwind pattern altitude to ensure aircraft separation. Raising the ceiling of the Salt Lake City Class B airspace area around SLC to 12,000 feet MSL also ensures airspace within which all aircraft, IFR and VFR, are subject to the same Class B airspace operating rule; enhancing the safety benefit to all and further reducing the potential for mid-air collisions in the airspace surrounding SLC.

To mitigate impacts on VFR aircraft operating between 10,000 feet and 12,000 feet MSL, the FAA has developed high altitude VFR transition routes, with associated frequencies, altitudes, and route depictions, for inclusion on the Salt Lake City Terminal Area Chart, as discussed further below. This charting was accomplished on April 5, 2012.

One commenter argued against raising the Salt Lake City Class B airspace area ceiling to 12,000 feet MSL, claiming it will have an adverse impact on all general aviation operations in that airspace. The commenter stated (1) the FAA was imposing a non-regulatory 14 CFR part 91.211, Supplemental oxygen, requirement on general aviation aircraft to install supplemental oxygen systems to fly over the Class B airspace; (2) air traffic controller approval/denial

authority for VFR clearances through Class B airspace creates an operational barrier to VFR operations where none existed before; and (3) the FAA's only intent is to provide increased operational and safety benefits to one segment of air traffic—Part 121 operators.

The FAA does not agree. First, the 14 CFR 91.211 regulation referenced establishes the requirement for the minimum flight crew of civil aircraft operating at cabin pressure altitudes above 12,500 feet MSL up to and including 14,000 feet MSL to use supplemental oxygen for that part of the flight at those altitudes that exceed thirty minutes. Raising the Salt Lake City Class B airspace area ceiling to 12,000 feet MSL still allows VFR aircraft to pass over the Class B airspace area at 12,500 feet MSL without requiring a supplemental oxygen system. Aircraft with flight durations of thirty minutes or less flying over the Salt Lake City Class B airspace area above 12,500 feet MSL up to and including 14,000 feet MSL may also operate without a supplemental oxygen system. For aircraft without supplemental oxygen systems that are unable to fly over the Salt Lake City Class B airspace ceiling as noted above, there are alternatives to installing a supplemental oxygen system available for transiting the SLC area. Those alternatives include obtaining a Class B clearance, flying established VFR transition routes, and circumnavigating the Salt Lake City Class B airspace area laterally or under the floor of the sub-areas.

Second, the FAA acknowledges that Class B clearances will be required for VFR aircraft that opt to continue flying VFR over SLC between 10,000 feet and 12,000 feet MSL, and that Class B airspace clearance requests from VFR aircraft are based on workload, operational limitations, and traffic conditions. Using radar, the Salt Lake City Terminal Radar Approach Control (TRACON) air traffic controllers have visibility of all aircraft, IFR and VFR, operating in the vicinity of SLC. Knowing the IFR traffic flows and the altitudes and intentions of IFR and VFR aircraft operating in the vicinity of SLC, the TRACON controllers are able to determine if clearance requests to enter or transit the Class B airspace can be safely approved. For Class B airspace clearance requests that can be approved, the TRACON controllers will continue to issue clearances with altitude and routing instructions to provide positive separation from all other aircraft, IFR and VFR, operating within the Class B airspace.

Lastly, this Class B airspace modification provides operational and safety benefits to all airspace users operating in the vicinity of SLC. The modified Class B airspace areas were designed to ensure all instrument procedures and associated traffic patterns for those procedures are contained within Class B airspace. However, a number of adjustments to the Salt Lake City Class B airspace area were made during the proposal process to ensure the airspace modification supported all interested airspace users. Revising the surface area boundary, amending floor altitudes of various sub-areas, charting high altitude VFR transition routes, and modifying VFR flyways, as suggested, are all examples of the efforts taken to ensure the final Salt Lake City Class B airspace design provides operational and safety benefits to all airspace users in the vicinity of SLC.

Four commenters were concerned that raising the Salt Lake City Class B airspace ceiling would result in a reduction of general aviation aircraft that are able to transition above the Class B airspace area and would force many general aviation pilots to fly at lower altitudes under the Class B airspace shelves, resulting in increased congestion in mountainous terrain, or circumnavigate the Class B airspace area altogether, using less efficient routing at more expense.

The FAA understands the need for safe routes for VFR aircraft to transition through, around, and under the Class B airspace. For VFR aircraft that are unable to overfly the modified Class B airspace ceiling (12,000 feet MSL), and decide not to contact Salt Lake City TRACON to receive Class B services, there are a number of airspace modifications made to the Class B airspace area to minimize impacts to VFR pilots flying under the Class B airspace shelves or opting to circumnavigate the Class B airspace altogether. The floor of Class B airspace south of Point of the Mountain was raised from 9,000 feet MSL to 10,000 feet MSL and the airspace west/northwest of the Point of the Mountain was raised from 7,000 feet MSL to 8,000 feet MSL to allow north- and south-bound VFR aircraft flying along I-15 and Point of the Mountain to remain 1,000 feet higher, at all times, than the previous Class B airspace allowed. The modified Salt Lake City Class B airspace design also incorporated reductions to the northern and southern boundaries of the Class B surface area to provide additional airspace for east- and west-bound VFR aircraft to fly under the Class B airspace area; thus reducing the

flying miles to be flown when compared to the previous Class B surface area. The Class B airspace along the ridgeline of the Wasatch Mountains was raised from the 9,000 feet MSL to 10,500 feet MSL to accommodate glider operations and VFR aircraft crossing the ridgeline.

Four commenters were concerned that general aviation pilots would not have as many alternatives as possible to transit through, over, and near the Salt Lake City Class B airspace. They requested the FAA consider all available means of accommodating general aviation to include an East-West VFR transit corridor, T-routes, VFR transitions, and VFR flyways.

Salt Lake City's traffic flows and pattern altitudes make establishing a VFR corridor impractical. Salt Lake City has only one downwind leg that passes west of the airport, and approximately 50 percent of Salt Lake City's departure traffic departs to the west/northwest, climbing to 10,000 feet MSL to clear terrain. The only way to allow a VFR aircraft to transit Salt Lake City Class B airspace at or below 10,000 feet MSL would be to stop the departures. These departures would conflict with any VFR corridor design that passed over the airport.

However, as recommended by the commenters and the Ad hoc Committee, the FAA has published frequencies, altitudes, and VFR transition and flyway routes on the Salt Lake City Terminal Area Chart to minimize the Class B airspace modification impact to VFR aircraft. The published VFR transition routes are established at 10,500 feet MSL for westbound traffic and at 11,500 feet MSL for eastbound traffic. Additionally, the VFR flyway amendment recommendations the FAA received have been incorporated on the VFR Flyway Planning Chart, as provided and addressed in the NPRM.

One commenter expressed concern that VFR aircraft flying near and above 12,000 feet MSL over Park City, UT, would conflict with IFR aircraft from SLC as a result of the Salt Lake City Class B airspace modification.

The FAA notes that Park City, UT, is located approximately 22 miles east southeast of SLC and approximately 19 miles east of the nearest boundary of the Salt Lake City Class B airspace. An analysis of SLC departure traffic indicates that aircraft departing for locations to the east are above 12,000 feet MSL approximately 16 miles west northwest of Park City and are not a factor for VFR aircraft over Park City, at and above 12,000 feet MSL. The modification of the Salt Lake City Class B airspace area was designed to contain existing instrument procedures and

large turbo-powered aircraft arriving/departing SLC. The existing departure procedures, altitudes, and flight tracks for the same fleet mix are unchanged by this Class B airspace modification. Since the Salt Lake City TRACON will continue using the same departure procedures, altitudes, and flight tracks in use today, no IFR-VFR aircraft traffic issues over Park City, UT, are expected.

One commenter stated it is virtually impossible to depart South Valley Regional Airport (U42) in Instrument Meteorological Conditions (IMC), or even marginal VFR conditions, on an IFR clearance due to conflicts with the IFR traffic flow into and out of SLC. The commenter requested the FAA address the issue by developing a viable IFR departure procedure for U42 so that any minor modifications to the Salt Lake City Class B modification could be incorporated into this regulatory action.

The delays associated with IFR operations at U42 are related to terrain, the close proximity of SLC, and non-radar separation requirements. The FAA's Flight Procedures Development Team was asked to review the issue identified above and recommend any alternatives or solutions that could be considered. Unfortunately, they could offer no solution due to U42's geographic proximity to SLC with its associated high density air traffic operations. Salt Lake City TRACON personnel met with the U42 Fixed Base Operator (FBO) owner to discuss the U42 operation, ensure understanding of the limitations by all parties, and reinforce the importance of coordinating IFR operations ahead of time as the best way to address departure delays at U42.

Differences From the NPRM

Editorial corrections have been made to the wording of the Salt Lake City Class B airspace legal description to remove duplicative information and excessive verbiage, simplify sub-area descriptions, and improve clarity. These corrections standardize the format only and do not affect the areas described.

In the Salt Lake City Class B airspace legal description header, the VORTAC listed as the "Salt Lake City VORTAC (TCH)" is corrected to read the "Wasatch VORTAC (TCH)". The geographic coordinates defining the VORTAC location were correct as published and remain unchanged.

Two typographical errors were also noted in the NPRM that affect the descriptions of Areas F, G, and H. The first typographical error listed the geographic coordinates for the southwest corner of Area F and northwest corner of Area G as "lat. 40°30'55" N., long. 112°07'00" W.", and

is corrected to read "lat. 40°30'33" N., long. 112°07'00" W." in both area descriptions. The second typographical error listed the geographic coordinates for the northwest corner of Area H as "lat. 40°27'07" N., long. 112°07'00" W.", and is corrected to read "lat. 40°24'07" N., long. 112°07'00" W." to match the geographic coordinate information for the same point described in Area G.

Additionally, this action makes a minor correction to the western boundary of Area I to ensure a 0.5 NM buffer east of the extended RNAV 35 final approach. The Wasatch VORTAC (TCH) DME and geographic position coordinates listed as "24.1-mile DME" and "lat. 40°27'05" N., long. 111°54'51" W." that were used to define the northern point of that boundary are corrected to read "24.4-mile DME" and "lat. 40°26'51" N., long. 111°54'42" W." The corresponding information for that point contained in Area G is also corrected. The geographic position coordinates listed as "lat. 40°18'14" N., long. 111°53'40" W." used to define the southern point of that boundary are corrected to read "lat. 40°18'14" N., long. 111°53'42" W." The corresponding information for that point contained in Area H is also corrected. Lastly, the geographic position coordinates listed as "lat. 40°24'12" N., long. 111°54'36" W." used to define the southeast corner of Area G and northeast corner of Area H, along the corrected western boundary of Area I, are corrected to read "lat. 40°24'19" N., long. 111°54'23" W."

Finally, this action makes a number of corrections to the "seconds" component of the lat./long. geographic coordinates to better match this information with the corresponding visual landmark or fix/radial/distance information for the associated point. These minor editorial corrections do not change the affected areas.

Radials listed in this rule are stated in degrees relative to True North.

The Rule

The FAA is amending Title 14 of the Code of Federal Regulations (14 CFR) part 71 to modify the Salt Lake City, UT, Class B airspace area. This action (depicted on the attached chart) raises the existing ceiling from 10,000 feet MSL to 12,000 feet MSL, and makes various boundary modifications in order to provide the additional airspace that is necessary to contain all instrument procedures at SLC and the large turbo-powered aircraft flying those instrument procedures within the confines of Class B airspace. The modifications better segregate IFR aircraft arriving/departing SLC and VFR aircraft operating in the vicinity of the Salt Lake Class B airspace

area. The following are the revisions to the Salt Lake City Class B airspace area:

Area A. Redefined from the surface to 12,000 feet MSL. The northern boundary is moved south an average of 2 miles to allow VFR aircraft to transition westbound sooner and relieve congestion between the Hill Air Force Base (AFB) Class D airspace and Salt Lake City Class B surface area airspace. The boundary north of the Skypark Airport (BTF) is moved slightly to the west to relieve congestion between the Class B surface area airspace and the Wasatch Mountains. The southern boundary surface area airspace East of U42 is combined with the new Area D as noted below.

Area B. Incorporates portions of existing Areas B and J, and establishes a floor at 7,800 feet MSL and ceiling at 12,000 feet MSL. The western boundary changes from the SLC Runway 17 ILS/DME antenna (I-BNT) 25-mile DME arc to the TCH 20-mile DME arc. Raising the floor matches the existing Class B airspace area over Hill AFB and allows VFR aircraft operating in the area to climb sooner.

Area C. New area established by incorporating a portion of existing Area A, raising the floor from the surface to 6,000 feet MSL and the ceiling to 12,000 feet MSL, to reduce congestion between the Hill AFB Class D airspace and the Salt Lake City Class B surface area airspace to allow VFR aircraft easier access to transit north of SLC below the Class B airspace area.

Area D. Expands laterally into existing Class B airspace with the ceiling raised to 12,000 feet MSL. Incorporates a portion of the existing Area A located East of U42, raising the floor from the surface to 6,000 feet MSL, to allow VFR aircraft easier access to and from U42.

Area E. Combines existing Areas C and K with the floor established at 6,500 feet MSL and the ceiling raised to 12,000 feet MSL. The southern boundary is extended south slightly using the TCH 16-mile DME arc. The southwest portion of the boundary is relocated east slightly using the TCH 12-mile DME arc to eliminate terrain penetrations of Class B airspace. The western boundary is defined by the TCH 13.5-mile DME arc instead of the I-BNT 13-mile DME arc.

Area F. New area established in existing Area E with the ceiling raised to 12,000 feet MSL and the northern boundary defined by the TCH 16-mile DME arc instead of the I-BNT 11 DME arc. The southern boundary is moved south slightly to contain runway 34L and 34R ILS approaches.

Area G. Combines existing Areas F and G with the floor established at 8,000 feet MSL and ceiling raised to 12,000 feet MSL. The southern boundary is established approximately four miles south of the existing Areas F and G southern boundary to allow IFR traffic during simultaneous independent ILS approaches to join final closer to SLC.

Area H. Similar to existing Area H, with the floor established at 9,000 feet MSL and ceiling raised to 12,000 feet MSL. Expanded slightly to the west to use the same longitude for its boundary as the new Area G and redefines the southern boundary further north by using the TCH 33-mile DME arc.

Area I. New area established east of area H with the floor established at 10,000 feet MSL and ceiling at 12,000 feet MSL. Designed to capture arrival traffic from the southeast.

Area J. New area established over the north end of the Oquirrh Mountains with the floor established at 11,000 feet MSL and ceiling at 12,000 feet MSL. This area contains IFR departure traffic climbing southbound, as well as arrival traffic being vectored to the downwind.

Area K. New area established redefining a portion of existing Area B with the floor raised to 8,600 feet MSL and ceiling to 12,000 feet MSL. Provides additional airspace for VFR aircraft.

Area L. Redefines a portion of existing Area I (northern section) with the floor raised to 10,500 feet MSL and ceiling to 12,000 feet MSL. Allows north-flow departures from SLC to climb and turn eastbound on course. The eastern boundary of this new area is moved to the west along the Wasatch Mountains ridgeline. The southern section of existing Area I is deleted.

Area M. Similar to existing Area M with the floor at 9,000 feet MSL and ceiling raised to 12,000 feet MSL. The lateral boundaries extend slightly with the northern boundary extended north to the TCH 26-mile DME arc and the western boundary extended west approximately one mile.

Area N. New area established north of the existing Salt Lake City Class B airspace area with the floor at 10,000 feet MSL and ceiling at 12,000 feet MSL. Contains aircraft flying instrument approaches to SLC runway 17.

Area O. New area established in existing Class B airspace north and east of SLC with the floor at 7,500 feet MSL and ceiling raised to 12,000 feet MSL. Provides containment of aircraft flying instrument approaches to SLC runway 16R and 16L.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion

under the National Environmental Policy Act in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no new information collection requirement associated with this final rule.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for

this final rule. The reasoning for this determination follows:

After consultation with a diverse cross-section of stakeholders that participated in the Ad hoc Committee to develop the recommendations contained in this rule, and a review of the recommendations and comments, the FAA expects that this final rule would result in minimal cost. The FAA is taking this action to improve the flow of air traffic, enhance safety, and reduce the potential for midair collision in the Salt Lake City Class B airspace.

The FAA received comments to the NPRM that indicated concern with the rule from an economic standpoint. Commenters such as the Aircraft Owners and Pilots Association (AOPA) expressed the concern that an increase to the ceiling height of Salt Lake City Class B airspace will result in general aviation pilots taking less efficient routing to circumnavigate the Class B airspace. The Experimental Aircraft Association (EAA) fears that general aviation operators who are unable to comply with the supplemental oxygen requirement or unable to obtain air traffic control clearance to fly visual flight rules (VFR) into the Class B will be forced to fly thousands of miles around the Salt Lake City Class B airspace in mountainous terrain. The result would be to cost general aviation aircraft operators thousands of dollars in unanticipated aircraft operating expenses and place the aircraft and passengers over hostile, mountainous terrain for extended periods of time.

The FAA has restructured the airspace to allow sufficient alternatives to circumnavigation for VFR traffic. The restructuring and other FAA actions include the following:

- Raising Class B airspace floors south of and west/northwest of the Point of the Mountain 1,000 feet to allow north- and south-bound VFR aircraft flying along I-15 more airspace to fly under the SLC Class B airspace area;
- Reducing Class B surface area northern and southern boundaries to provide more airspace for east- and west-bound VFR aircraft to fly under the Class B airspace area;
- Raising Class B airspace floor along the Wasatch Mountains ridgeline 1,500 feet to provide more airspace for VFR aircraft crossing the ridgeline;
- Establishing and charting high altitude VFR transition routes at 10,500 feet MSL for westbound traffic and at 11,500 feet MSL for eastbound traffic, with associated frequencies, on the Salt Lake City Terminal Area Charts; and

- Adopting VFR flyway amendment recommendations received from the Ad hoc Committee and NPRM commenters. The FAA provided numerous alternatives for GA traffic to fly in the Salt Lake City airspace. As such, we estimate a minimal impact.

FAA has, therefore, determined that this final rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT’s Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes the rule would not have a significant economic impact on a substantial number of small entities as the economic impact is expected to be minimal.

Therefore, the FAA Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create

unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will enhance safety and is not considered an unnecessary obstacle to trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$143.1 million in lieu of \$100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

*Paragraph 3000 Subpart B—Class B
Airspace.*

* * * * *

ANM UT B Salt Lake City, UT [Modified]

Salt Lake City International Airport (Primary Airport)

(Lat. 40°47'18" N., long. 111°58'40" W.)

Wasatch VORTAC (TCH)

(Lat. 40°51'01" N., long. 111°58'55" W.)

Hill AFB (HIF)

(Lat. 41°07'26" N., long. 111°58'23" W.)

Boundaries

Area A. That area extending upward from the surface to and including 12,000 MSL, within an area bounded by a line beginning at the TCH 20° radial 6.6-mile DME at lat. 40°57'13" N., long. 111°55'56" W.; thence south to the intersection of Redwood Rd. and W. 500 South St. at the TCH 049° radial 3.1-mile DME at lat. 40°53'02" N., long. 111°55'48" W.; thence south to Center St. at the TCH 102° radial 2.3-mile DME at lat. 40°50'32" N., long. 111°55'57" W.; thence east along Center St. to Interstate 15 (I-15) at the 4.3-mile DME radius of the Salt Lake City International Airport at the TCH 099° radial 3-mile DME at lat. 40°50'32" N., long. 111°54'56" W.; thence clockwise along the 4.3-mile DME radius of the Salt Lake City International Airport to I-15 at the TCH 151° radial 7.3-mile DME at lat. 40°44'37" N., long. 111°54'15" W.; thence south along I-15 to W. 5300 South St. at the TCH 163° radial 12.3-mile DME at lat. 40°39'17" N., long. 111°54'06" W.; thence west to the Usana Amphitheatre at the TCH 192° radial 11.8-mile DME at lat. 40°39'28" N., long. 112°02'08" W.; thence northwest to the intersection of State Route 201 (SR-201) and S. 8000 West St. at the TCH 210° radial 9.1-mile DME at lat. 40°43'06" N., long. 112°04'56" W.; thence northwest to Interstate 80 (I-80) at the TCH 239° radial 9-mile DME at lat. 40°46'22" N., long. 112°09'04" W.; thence north to a point southeast of Seagull Point on Antelope Island at the TCH 304° radial 9.3-mile DME at lat. 40°56'13" N., long. 112°09'05" W.; thence east to the point of beginning.

Area B. That airspace extending upward from 7,800 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the TCH 265° radial 12-mile DME at lat. 40°49'57" N., long. 112°14'40" W.; thence west along the TCH 265° radial to the 20-mile DME arc at lat. 40°49'13" N., long. 112°25'09" W.; thence clockwise along the TCH 20-mile DME arc to the 4.3-mile DME radius of Hill AFB at the TCH 009° radial at lat. 41°10'47" N., long. 111°54'48" W.; thence clockwise along the 4.3-mile DME radius of Hill AFB to W. 1700 South St. at the TCH 347° radial 14.7-mile DME at lat. 41°05'20" N., long. 112°03'21" W.; thence west along W. 1700 South St. to the TCH 329° radial 16.8-mile DME at lat. 41°05'22" N., long. 112°10'20" W.; thence south to the TCH 316° radial 11.6-mile DME at lat. 40°59'21" N., long. 112°09'33" W.; thence south to a point southeast of Seagull Point on Antelope Island at the TCH 304° radial 9.3-mile DME at lat. 40°56'13" N., long. 112°09'05" W.; thence southwest to the point of beginning.

Area C. That airspace extending upward from 6,000 feet MSL to and including 12,000

feet MSL, within an area bounded by a line beginning at the TCH 316° radial 11.6-mile DME at lat. 40°59'21" N., long. 112°09'33" W.; thence east to I-15 at the TCH 013° radial 9.8-mile DME at lat. 41°00'34" N., long. 111°56'00" W.; thence south to the TCH 020° radial 6.6-mile DME at lat. 40°57'13" N., long. 111°55'56" W.; thence west to a point southeast of Seagull Point on Antelope Island at the TCH 304° radial 9.3-mile DME at lat. 40°56'13" N., long. 112°09'05" W.; thence north to the point of beginning.

Area D. That airspace extending upward from 6,000 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the Usana Amphitheatre at the TCH 192° radial 11.8-mile DME at lat. 40°39'28" N., long. 112°02'08" W.; thence east to the intersection of I-15 and W. 5300 South St. at the TCH 163° radial 12.3-mile DME at lat. 40°39'17" N., long. 111°54'06" W.; thence south along I-15 to the TCH 169° radial 20.7-mile DME at lat. 40°30'43" N., long. 111°53'31" W.; thence west to the TCH 184° radial 20.4-mile DME at lat. 40°30'38" N., long. 112°00'33" W.; thence north to the TCH 184° radial 16-mile DME at lat. 40°35'03" N., long. 112°00'23" W.; thence clockwise along the TCH 16-mile DME arc to State Route 48 (SR-48) at the TCH 189° radial at lat. 40°35'13" N., long. 112°02'18" W.; thence north to the point of beginning.

Area E. That airspace extending upward from 6,500 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning on SR-48 at the TCH 189° radial 16-mile DME arc at lat. 40°35'13" N., long. 112°02'18" W.; thence clockwise along the TCH 16-mile DME arc to the TCH 203° radial at lat. 40°36'14" N., long. 112°07'00" W.; thence north along long. 112°07'00" W. to the TCH 211° radial 12-mile DME at lat. 40°40'42" N., long. 112°07'00" W.; thence clockwise along the TCH 12-mile DME arc to the railroad tracks at the TCH 233° radial at lat. 40°43'43" N., long. 112°11'27" W.; thence west along the railroad tracks to the TCH 236° radial 13.5-mile DME at lat. 40°43'27" N., long. 112°13'38" W.; thence clockwise along the TCH 13.5-mile DME arc to the TCH 265° radial at lat. 40°49'49" N., long. 112°16'38" W.; thence east along the TCH 265° radial to the TCH 12-mile DME at lat. 40°49'57" N., long. 112°14'40" W.; thence northeast to a point southeast of Seagull Point on Antelope Island at the TCH 304° radial 9.3-mile DME at lat. 40°56'13" N., long. 112°09'05" W.; thence south to I-80 at the TCH 239° radial 9-mile DME at lat. 40°46'22" N., long. 112°09'04" W.; thence southeast to the intersection of SR-201 and S. 8000 West St. at the TCH 210° radial 9.1-mile DME at lat. 40°43'06" N., long. 112°04'56" W.; thence southeast to the Usana Amphitheatre at the TCH 192° radial 11.8-mile DME at lat. 40°39'28" N., long. 112°02'08" W.; thence south to the point of beginning.

Area F. That airspace extending upward from 7,000 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the TCH 184° radial 16-mile DME at lat. 40°35'03" N., long. 112°00'23" W.; thence clockwise along the TCH 16-mile DME arc to the TCH 203° radial at lat. 40°36'14" N., long. 112°07'00" W.; thence south along long. 112°07'00" W. to the TCH

197° radial 21.4-mile DME at lat. 40°30'33" N., long. 112°07'00" W.; thence east to the TCH 184° radial 20.4-mile DME at lat. 40°30'38" N., long. 112°00'33" W.; thence north to the point of beginning.

Area G. That airspace extending upward from 8,000 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning on I-15 at the TCH 169° radial 20.7-mile DME at lat. 40°30'43" N., long. 111°53'31" W.; thence south along I-15 to the TCH 172° radial 24.4-mile DME at lat. 40°26'51" N., long. 111°54'42" W.; thence south along the TCH 173° radial to the TCH 26.9-mile DME at lat. 40°24'19" N., long. 111°54'23" W.; thence west to the TCH 193° radial 27.6-mile DME at lat. 40°24'07" N., long. 112°07'00" W.; thence north along long. 112°07'00" W. to the TCH 197° radial 21.4-mile DME at lat. 40°30'33" N., long. 112°07'00" W.; thence east to the point of beginning. Excluding R-6412, when active.

Area H. That airspace extending upward from 9,000 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the TCH 193° radial 27.6-mile DME at lat. 40°24'07" N., long. 112°07'00" W.; thence south along long. 112°07'00" W. to the TCH 191° radial 33-mile DME at lat. 40°18'34" N., long. 112°07'00" W.; thence counter clockwise along the TCH 33-mile DME arc to the TCH 173° radial at lat. 40°18'14" N., long. 111°53'42" W.; thence north along the TCH 173° radial to the TCH 26.9-mile DME at lat. 40°24'19" N., long. 111°54'23" W.; thence west to the point of beginning. Excluding R-6412, when active.

Area I. That airspace extending upward from 10,000 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning on I-15 at the TCH 172° radial 24.4-mile DME at lat. 40°26'51" N., long. 111°54'42" W.; thence south along I-15 to intercept the TCH 160° radial 33-mile DME at lat. 40°19'54" N., long. 111°44'26" W.; thence clockwise along the TCH 33-mile DME arc to the TCH 173° radial at lat. 40°18'14" N., long. 111°53'42" W.; thence north along the TCH 173° radial to the point of beginning.

Area J. That airspace extending upward from 11,000 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning on the railroad tracks at the TCH 238° radial 20-mile DME at lat. 40°40'22" N., long. 112°21'12" W.; thence east along the railroad tracks to the TCH 233° radial 12-mile DME at lat. 40°43'43" N., long. 112°11'27" W.; thence counter clockwise along the TCH 12-mile DME arc to the TCH 211° radial at lat. 40°40'42" N., long. 112°07'00" W.; thence south along long. 112°07'00" W. to the TCH 198° radial 20-mile DME at lat. 40°31'58" N., long. 112°07'00" W.; thence clockwise along the TCH 20-mile DME arc to the point of beginning.

Area K. That airspace extending upward from 8,600 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the TCH 265° radial 13.5-mile DME at lat. 40°49'49" N., long. 112°16'38" W.; thence west along the TCH 265° radial to intercept the TCH 20-mile DME arc at lat. 40°49'13" N., long. 112°25'09" W.; thence counter clockwise along the TCH 20-mile DME arc to the railroad tracks at the TCH

238° radial at lat. 40°40'22" N., long. 112°21'12" W.; thence east along the railroad tracks to the TCH 236° radial 13.5-mile DME at lat. 40°43'27" N., long. 112°13'38" W.; thence clockwise along the TCH 13.5-mile DME arc to the point of beginning.

Area L. That airspace extending upward from 10,500 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the intersection of the Wasatch Mountains ridge line and Interstate 84 (I-84) at the TCH 016° radial 18-mile DME at lat. 41°08'17" N., long. 111°52'18" W.; thence west along I-84 to the 4.3-mile radius of Hill AFB at the TCH 015° radial 17.9-mile DME at lat. 41°08'16" N., long. 111°52'48" W.; thence clockwise along the 4.3-mile radius of Hill AFB to U.S. Highway 89 at the TCH 014° radial 13.6-mile DME at lat. 41°04'11" N., long. 111°54'39" W.; thence south along U.S. Highway 89 to I-15 at the TCH 024° radial 9-mile DME at lat. 40°59'14" N., long. 111°54'05" W.; thence south along I-15 to the TCH 072° radial 4-mile DME at lat. 40°52'16" N., long. 111°53'50" W.; thence east along lat. 40°52'16" N. to the TCH 081° radial 8-mile DME at lat. 40°52'16" N., long. 111°48'30" W.; thence north along long. 111°48'30" W. to the Wasatch Mountains ridge line at the TCH 059° radial 9.2-mile DME at lat. 40°55'45" N., long. 111°48'30" W.; thence north along the Wasatch Mountains ridge line to the point of beginning.

Area M. That airspace extending upward from 9,000 feet MSL to and including 12,000

feet MSL, within an area bounded by a line beginning on I-15 at the TCH 356° radial 26-mile DME at lat. 41°16'57" N., long. 112°01'33" W.; thence counter clockwise along the TCH 26-mile DME arc to the TCH 338° radial at lat. 41°15'07" N., long. 112°11'50" W.; thence south to the TCH 333° radial 20-mile DME at lat. 41°08'50" N., long. 112°10'56" W.; thence clockwise along the TCH 20-mile DME arc to I-15 at the TCH 356° radial at lat. 41°10'58" N., long. 112°00'49" W.; thence north along I-15 to the point of beginning.

Area N. That airspace extending upward from 10,000 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning on I-15 at the TCH 356° radial 26-mile DME at lat. 41°16'57" N., long. 112°01'33" W.; thence clockwise along the TCH 26-mile DME arc to North Mountain Rd. at the TCH 003° radial at lat. 41°16'59" N., long. 111°56'57" W.; thence south on North Mountain Rd., which turns into Harrison Blvd., to the TCH 004° radial 20-mile DME at lat. 41°10'58" N., long. 111°56'56" W.; thence counter clockwise along the TCH 20-mile DME arc to I-15 at the TCH 356° radial at lat. 41°10'58" N., long. 112°00'49" W.; thence north along I-15 to the point of beginning.

Area O. That airspace extending upward from 7,500 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the intersection of U.S. Highway 89 and a 4.3-mile radius from Hill AFB at the

TCH 014° radial 13.6-mile DME at lat. 41°04'11" N., long. 111°54'39" W.; thence clockwise along the 4.3-mile radius from Hill AFB to 1700 South St. at the TCH 347° radial 14.7-mile DME at lat. 41°05'20" N., long. 112°03'21" W.; thence west along W. 1700 South St. to the TCH 329° radial 16.8-mile DME at lat. 41°05'22" N., long. 112°10'20" W.; thence south to the TCH 316° radial 11.6-mile DME at lat. 40°59'21" N., long. 112°09'33" W.; thence east to I-15 at the TCH 013° radial 9.8-mile DME at lat. 41°00'34" N., long. 111°56'00" W.; thence south to the TCH 020° radial 6.6-mile DME at lat. 40°57'13" N., long. 111°55'56" W.; thence south to the intersection of Redwood Rd. and W. 500 South St. at the TCH 049° radial 3.1-mile DME at lat. 40°53'02" N., long. 111°55'48" W.; thence south to Center St. at the TCH 102° radial 2.3-mile DME at lat. 40°50'32" N., long. 111°55'57" W.; thence east along Center St. to I-15 at the TCH 099° radial 3-mile DME at lat. 40°50'32" N., long. 111°54'56" W.; thence north along I-15 to U.S. Highway 89 at the TCH 024° radial 9-mile DME at lat. 40°59'14" N., long. 111°54'05" W.; thence north along U.S. Highway 89 to the point of beginning.

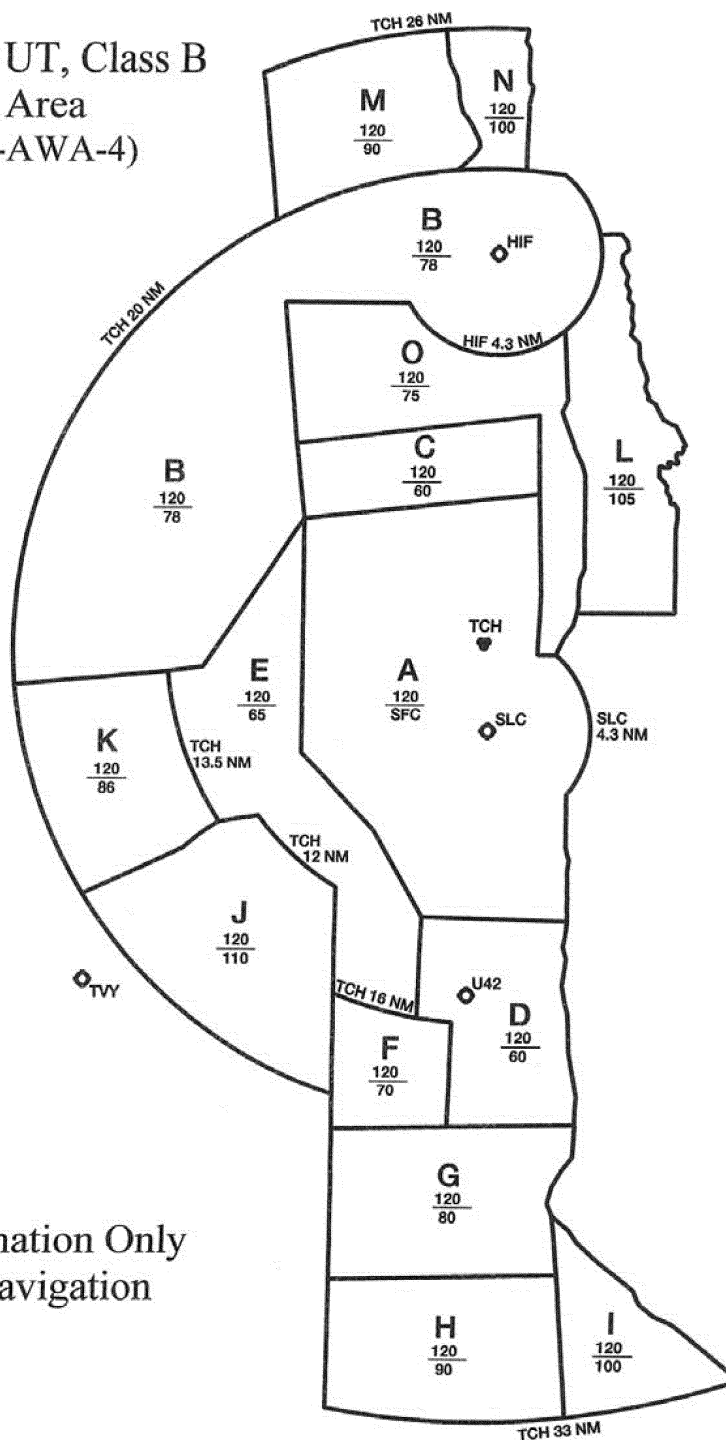
Issued in Washington, DC, on August 2, 2012.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

BILLING CODE 4910-13-P

Salt Lake City, UT, Class B
Airspace Area
(Docket # 11-AWA-4)



For Information Only
Not For Navigation

[FR Doc. 2012-19583 Filed 8-16-12; 8:45 am]

BILLING CODE 4910-13-C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2012-0392; Airspace
Docket No. 12-AGL-3]

**Amendment of Class D Airspace; Sault
Ste Marie, ON**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D
airspace at Sault Ste Marie, ON.
Additional controlled airspace is
necessary to coincide with the Canadian
control zone over Sault Ste Marie
Airport. The FAA is taking this action
to enhance the safety and management
of Instrument Flight Rule (IFR)
operations at the airport.

DATES: *Effective date:* 0901 UTC, November 15, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817-321-7716.

SUPPLEMENTARY INFORMATION:

History

On May 21, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class D airspace for the Sault Ste Marie, ON, area, creating additional controlled airspace at Sault Ste Marie Airport (77 FR 29916) Docket No. FAA-2012-0392. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR Part 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class D airspace at Sault Ste Marie Airport, Sault Ste Marie, ON, creating additional controlled airspace to coincide with that portion of the control zone in Canadian airspace. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

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

number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Sault Ste Marie Airport, Sault Ste Marie, ON.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, “Environmental Impacts: Policies and Procedures,” paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace

* * * * *

AGL ON D Sault Ste Marie, ON [Amended]
Sault Ste Marie Airport, ON, Canada

(Lat. 46°29′06″ N., long. 84°30′34″ W.)

That airspace in the United States at or below 3,000 feet MSL within a 5-mile radius of Sault Ste Marie Airport.

Issued in Fort Worth, Texas, on August 1, 2012.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012-20138 Filed 8-16-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2011-1429; Airspace Docket No. 11-AAL-22]

Establishment of Class E Airspace; Chenega Bay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Chenega Bay, AK, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Chenega Bay Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, November 15, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA, 98057; telephone (425) 203-4517.

SUPPLEMENTARY INFORMATION:

History

On May 29, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish controlled airspace at Chenega Bay, AK (77 FR 31548). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. The FAA received one comment from the National Business Aviation Association (NBAA).

The NBAA recommended that the FAA lower some of the adjacent Class E airspace down to 1,200 feet above the surface to increase the efficiency of radar vectoring in the area.

The FAA believes that lowering this airspace is outside the scope of this rulemaking action and would not serve the immediate purpose of establishing the airspace necessary for the safety of aircraft within the Chenega Bay, airport area.

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

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface, at Chenega Bay Airport, to accommodate IFR aircraft executing new RNAV (GPS) standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Chenega Bay Airport, AK.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, “Environmental Impacts: Policies and Procedures,” paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AAL AK E5 Chenega Bay, AK [New]

Chenega Bay Airport, AK
(Lat. 60°04’43” N., long. 147°59’41” W.)

That airspace extending upward from 700 feet above the surface within a 2-mile radius of the Chenega Bay Airport, and that airspace beginning at the intersection of the 2-mile radius of the airport and 170° bearing of Chenega Bay Airport to lat. 60°02’17” N., long. 147°39’07” W.; to lat. 60°05’06” N., long. 147°28’33” W.; to lat. 60°11’41” N., long. 147°37’16” W.; thence to the intersection of the 2-mile radius of Chenega Bay Airport and 353° bearing of the airport.

Issued in Seattle, Washington, on August 6, 2012.

John Warner,
Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–20139 Filed 8–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 111012619–2294–04]

RIN 0691–AA81

International Services Surveys and Direct Investment Surveys Reporting

AGENCY: Bureau of Economic Analysis.

ACTION: Notice of clarification.

SUMMARY: The Bureau of Economic Analysis (BEA) issues this document to clarify for the public a rule BEA published in April 2012 that set out new procedures BEA will follow to collect data on international trade in services and direct investment surveys. The surveys are provided for by the International Investment and Trade in Services Survey Act (the Act) and the Omnibus Trade and Competitiveness Act of 1988. Specifically, BEA clarifies that the previously issued rule does not have retroactive effect, and that those entities required to complete surveys that BEA is currently conducting based on rules creating those surveys—the 2011 BE–11, 2011 BE–15, 2012 BE–12, 2012 BE–29, 2012 BE–120, and all 2012 quarterly surveys—must still complete those surveys.

DATES: August 17, 2012.

FOR FURTHER INFORMATION CONTACT:

David H. Galler, Chief, Direct Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; email David.Galler@bea.gov or phone (202) 606–9835.

SUPPLEMENTARY INFORMATION: The International Investment and Trade in Services Survey Act (the Act) and the Omnibus Trade and Competitiveness Act of 1988 both require BEA to collect comprehensive and reliable information on international trade in services and direct investment from all U.S. persons coming within the reporting requirements. For many years, BEA conducted these surveys only after implementing the surveys through notice and comment rulemaking procedures. See, e.g., Direct Investment Surveys: BE–12, Benchmark Survey of Foreign Direct Investment in the United States at 76 FR 79054 (December 21, 2011) or International Services Surveys: BE–150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions at 77 FR 10958 (February 24, 2012). Issuing the surveys using the notice and comment procedures of the Administrative Procedure Act, 5 U.S.C. 553 (APA) provided all potential filers

with constructive notice of the surveys as well as of their requirement to complete them. *See* 44 U.S.C. 1507 (filing a document with the **Federal Register** “is sufficient to give notice of the contents of the document to the person subject to or affected by it”). However, issuing surveys through notice and comment was not required by statute. Additionally, over time BEA found that going through the notice and comment requirements of the APA to prepare and issue surveys on a routine basis was time-consuming, and determined that it could collect such information just as, or perhaps more, efficiently by issuing the surveys through notices, rather than through individual rulemakings, and by informing respondents directly of the need to complete the surveys. *See* 77 FR 772 (January 6, 2012).

To make this change, on April 24, 2012, BEA published in the **Federal Register** a final rule titled, “International Services Surveys and Direct Investment Surveys Reporting,” 77 FR 24373. That rule amended BEA’s regulations at 15 CFR parts 801–807, and stated that BEA will no longer issue most surveys required under the Act or the Omnibus Trade and Competitiveness Act of 1988 following notice and comment rulemaking procedures under the APA. BEA will now, going forward, issue notices of its surveys in the **Federal Register** and individually to U.S. persons required to complete the surveys. *See* 15 CFR 801.3.

The purpose of this notice is to clarify to respondents that the final rule did not alter any pre-existing response obligations; that is, the rule amending BEA’s regulations at 15 CFR parts 801–807 does not have retroactive effect. We also note that the APA generally prohibits an agency from implementing a rule with retroactive effect. Direct investment and international trade in services surveys that BEA is currently conducting will continue to operate under the regulations established under their most recent rulemaking action prior to April 24, 2012. For example, entities required by former 15 CFR 806.14 to complete the BE–11 Annual Survey of U.S. Direct Investment Abroad (see 75 FR 80294) for fiscal year 2011 are not freed of that obligation until they receive notice from BEA of a new BE–11 survey. The new procedures for implementing surveys through notices in the **Federal Register** and through direct notices to respondents will be used only for surveys issued after the April 24, 2012 final rule.

Accordingly, BEA’s new survey procedures only apply to surveys it will issue in the future, not to those that it

issued prior to April 24, 2012 following notice and comment rulemaking according to the APA.

Dated: August 9, 2012.

Joel D. Platt,

Acting Director, Bureau of Economic Analysis.

[FR Doc. 2012–20147 Filed 8–16–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket ID–OSHA–2007–0066]

RIN 1218–AC61

Cranes and Derricks in Construction: Demolition and Underground Construction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Direct final rule.

SUMMARY: On August 9, 2010, OSHA issued a final standard updating the requirements for cranes and derricks used in construction work. For most construction work, the final rule replaced a prior cranes and derricks standard. However, the prior standard continues to apply to demolition and underground construction work. Through this direct final rule, OSHA is applying the updated requirements to that work. With this direct final rule, OSHA also is correcting inadvertent errors made to the demolition and underground construction standards when it issued the final rule for cranes and derricks in construction.

DATES: This direct final rule will become effective on November 15, 2012 unless OSHA receives a significant adverse comment to this direct final rule or the companion proposal by September 17, 2012. If OSHA receives adverse comment, it will publish a timely withdrawal of the rule in the **Federal Register**. Submit comments to this direct final rule, including comments to the information-collection (paperwork) determination (described under the section titled AGENCY DETERMINATIONS), hearing requests, and other information by September 17, 2012. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES: Submit comments, hearing requests, and other material, identified by Docket No. OSHA–2007–0066, by any of the following methods:

Electronically: Submit comments and attachments, as well as hearing requests and other information, electronically at <http://www.regulations.gov>, which is the Federal e-Rulemaking Portal. Follow the instructions online for submitting comments. Please note that this docket may include several different **Federal Register** notices involving active rulemakings, so selecting the correct notice or its ID number when submitting comments for this rulemaking is extremely important. After accessing the docket (OSHA–2007–0066), look for the name of this rulemaking (Cranes and Derricks in Construction: Demolition and Underground Construction) in the column labeled “Title.”

Facsimile: OSHA allows facsimile transmission of comments that are 10 pages or fewer in length (including attachments). Fax these documents to the OSHA Docket Office at (202) 693–1648. OSHA does not require hard copies of these documents. Instead of transmitting facsimile copies of attachments that supplement these documents (e.g., studies, journal articles), commenters must submit these attachments to the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210. These attachments must clearly identify the sender’s name, the date, subject, the title of the rulemaking (Cranes and Derricks in Construction: Demolition and Underground Construction) and the docket number (OSHA–2007–0066) so that the Docket Office can attach them to the appropriate document.

Regular mail, express delivery, hand (courier) delivery, and messenger service: Submit comments and any additional material to the OSHA Docket Office, RIN No. 1218–AC61, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; telephone: (202) 693–2350. (OSHA’s TTY number is (877) 889–5627). Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service. The Docket Office will accept deliveries (express delivery, hand delivery, messenger service) during the Docket Office’s normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency’s name, the title of the rulemaking (Cranes and Derricks in Construction: Demolition and Underground Construction), and the docket number (i.e., OSHA Docket No. OSHA–2007–0066). OSHA will place comments and other material, including

any personal information, in the public docket without revision, and the comments and other material will be available online at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov> or to the OSHA Docket Office at the above address. The electronic docket for this direct final rule established at <http://www.regulations.gov> lists most of the documents in the docket. However, some information (e.g., copyrighted material) is not available publicly to read or download through this Web site. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries: Mr. Frank Meilinger, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693-1999.

Technical inquiries: Mr. Garvin Branch, Directorate of Construction, Room N-3468, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693-2020; fax: (202) 693-1689.

Copies of this Federal Register notice and news releases: Electronic copies of these documents are available at OSHA's Web page at <http://www.osha.gov>.

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Amendments to Standards

I. Request for Comment

OSHA requests comment on all issues related to this direct final rule, including economic, paperwork, or other regulatory impacts of this rule on the regulated community. If OSHA receives no significant adverse comment to either the direct final rule or the companion proposed rule, OSHA will publish a **Federal Register** document confirming the effective date of this direct final rule and withdrawing the companion proposed rule published in the "Proposed Rules" section of this **Federal Register**. Such confirmation may include minor stylistic or technical changes to the document. For the purpose of judicial review, OSHA considers the date of confirmation of the effective date of this direct final rule as the date of promulgation.

II. Direct Final Rulemaking

In direct final rulemaking, an agency publishes a direct final rule in the **Federal Register** with a statement that the rule will become effective unless the agency receives significant adverse comment within a specified period. The agency may publish an identical proposed rule at the same time. If the agency receives no significant adverse comment in response to the direct final rule, the agency typically confirms the effective date of a direct final rule through a separate **Federal Register** notice. If the agency receives a significant adverse comment, the agency withdraws the direct final rule and treats such comment as a response to the proposed rule. An agency uses direct final rulemaking when it anticipates that a rule will not be controversial.

OSHA is publishing a companion proposed rule along with this direct final rule in the "Proposed Rules" section of today's **Federal Register**. For purposes of this direct final rule, a significant adverse comment is one that explains why the amendments to OSHA's underground construction and demolition standards would be inappropriate. In determining whether a comment necessitates withdrawal of the direct final rule, OSHA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. OSHA will not consider a comment recommending an additional amendment to be a significant adverse comment unless the comment states why the direct final rule would be ineffective without the addition.

The comment period for the proposed rule runs concurrently with that of the

direct final rule. OSHA will treat comments received on the companion proposed rule as comments regarding the direct final rule. OSHA also will consider significant adverse comment submitted to the direct final rule as comment to the companion proposed rule. If OSHA receives a significant adverse comment on either this direct final rule or the proposed rule, it will publish a timely withdrawal of this direct final rule and proceed with the companion proposed rule. In the event OSHA withdraws the direct final rule because of significant adverse comment, OSHA will consider all timely comments received in response to the direct final rule when it continues with the proposed rule. After carefully considering all comments to the direct final rule and the proposal, OSHA will decide whether to publish a new final rule.

OSHA determined that the subject of this rulemaking is suitable for direct final rulemaking. Under the final rule for cranes and derricks in construction, most construction work involving cranes and derricks falls under new subpart CC of 29 CFR 1926, but underground construction and demolition remain covered under the former rule (*i.e.*, § 1926.550). These amendments will result in the new subpart CC covering all construction operations, thereby improving worker safety because the new rule provides better protection to workers than the former rule. Moreover, these amendments will facilitate employer compliance by having all construction operations involving cranes and derricks subject to a single rule rather than by having a few operations subject to a different rule. In addition, this direct final rule corrects inadvertent errors made to the standards for underground construction and demolition when OSHA issued the final cranes rule. Therefore, OSHA does not expect objections from the public to this rulemaking action. Accordingly, the Agency believes the regulated community will welcome this effort to harmonize the requirements regulating crane and derrick operations in underground construction and demolition, and to remove errors that hinder interpretation and proper application of existing standards.

III. Discussion of Amendments

A. Background

OSHA designed the final rule for cranes and derricks in construction, codified at 29 CFR part 1926, subpart CC, to replace the earlier rule

(§ 1926.550) for all construction work.¹ In proposing the new cranes and derricks rule, OSHA explained that the rule's purpose was "to protect employees from the hazards associated with hoisting equipment when used to perform construction activities" (73 FR 59714). Because OSHA developed the new rule to supplant the former rule entirely, OSHA proposed to remove and reserve § 1926.550 (73 FR 59915). When other OSHA construction standards referred to § 1926.550 directly, or indirectly, as part of subpart N, OSHA proposed to amend those provisions to refer instead to the new requirements in subpart CC (73 FR 59914–15).

In the proposed rule for cranes and derricks in construction, OSHA inadvertently did not propose to amend three provisions that referred to subpart N and encompassed the requirements of § 1926.550. These provisions included two provisions applicable to demolition work (§ 1926.856(c) and § 1926.858(b)), and one provision applicable to underground construction work (§ 1926.800(t)). When it issued the final rule, OSHA noted concerns about potentially inadequate notice to the public regarding any effort to amend these provisions in the final rule; consequently, OSHA decided not to amend these provisions in the final rule. OSHA instead stated that it would revisit the issue later (75 FR 47920–21).

Having removed the requirements of § 1926.550 in the final rule, OSHA had to reestablish the substance of the demolition and underground construction provisions in a new subpart DD in the final rule, redesignate § 1926.550 as § 1926.1501 of subpart DD, and amend the demolition and underground construction provisions that previously referred to subpart N to refer instead to the new subpart DD. OSHA provided in § 1926.1500 of subpart DD that "[t]his subpart applies in lieu of § 1926 subpart CC." However, in making these revisions, OSHA inadvertently made changes to the demolition and underground construction provisions that modified the meaning of these provisions. In addition, the Code of Federal Regulations eliminated all of the subparagraphs of § 1926.800(t), except for the introductory paragraph, because of a technical error in the draft regulatory language.

This direct final rule, therefore, will accomplish two goals. First, it will bring all crane and derrick use in construction work under new subpart CC. Second, it will correct the errors in the final rule

that substantively altered the demolition and underground construction provisions, and replace subparagraphs § 1926.800(t)(1) through (4). Below, OSHA describes the amendments to the demolition and underground construction standards that OSHA made in the final rule for cranes and derricks in construction (including inadvertent errors), as well as the revisions and corrections to these standards made by OSHA under this direct final rule.

B. Demolition Work

Before OSHA issued the final rule for cranes and derricks in construction, § 1926.856(c) stated, "Mechanical equipment used shall meet the requirements specified in subparts N and O of this part," and § 1926.858(b) read, "Cranes, derricks, and other hoisting equipment used shall meet the requirements specified in subpart N of this part." In the final rule for cranes and derricks in construction, OSHA established a new subpart DD, redesignated the prior cranes and derricks rule (§ 1926.550) as § 1926.1501 of subpart DD, and amended § 1926.856(c) to require compliance with the new subpart DD, in addition to the remaining requirements of subparts N and O. OSHA also amended § 1926.858(b) to require compliance with new subpart DD instead of subpart N.

It was OSHA's expressed purpose not to make substantive revisions to the requirements of these two sections in the final rule.² Nevertheless, OSHA made an inadvertent substantive change to § 1926.858(b).³ That section originally incorporated all requirements of subpart N for "cranes, derricks, and other hoisting equipment," not just the requirements of subpart N's cranes and derricks standard at § 1926.550. However, the final rule did not reference other requirements of subpart N that pertain to demolition work, which include the requirements of § 1926.552 (Material hoists, personnel hoists, and elevators) and § 1926.554 (Overhead hoists). As a result, the amendment had the effect of deleting the requirement for employers engaged in demolition work to comply with

§§ 1926.552 and 1926.554. Therefore, to cover all construction work under subpart CC, and to correct these errors, OSHA is amending §§ 1926.856(c) and 1926.858(b) by replacing the requirements to comply with subpart DD with requirements to comply with subpart CC, and is amending § 1926.858(b) by reinstating the requirement to comply with subpart N as well.

C. Underground Construction

Section 1926.800(t) contains requirements for hoisting that are unique to underground construction. Before OSHA issued the final rule for cranes and derricks in construction, the previous version of § 1926.800(t) contained an introductory paragraph that cross-referenced other OSHA standards that apply to hoisting in underground construction; these cross-references consisted of the requirements of the prior cranes and derricks rule at § 1926.550, including most of § 1926.550(g) (the provision of the prior rule that applied to hoisting personnel), and requirements for material hoists, personnel hoists, and elevators at § 1926.552(a) through (d). Previous § 1926.800(t) included one substantive modification to the requirements of prior § 1926.550(g)(2): employers could use cranes to hoist employees for routine access to underground worksites via a shaft without showing that conventional means would be more hazardous, or not possible, for this purpose due to structural design or worksite conditions.⁴ When it issued the underground construction rule, OSHA included this modification because hoisting personnel for routine access to the underground worksites via a shaft occurs under more controlled, and less hazardous, conditions than hoisting personnel in general (54 FR 23824, 23845). Previous § 1926.800(t)(1) through (4) contained additional requirements for hoisting unique to underground construction. Language at the beginning of the introductory paragraph of § 1926.800(t), "Except as modified by this paragraph (t)," clarified that the requirements and exceptions in 1926.800(t)(1) through (4) take precedence over the cross-referenced requirements, including the former cranes standard under § 1926.550.

In the final cranes rule, OSHA redesignated the prior cranes and derricks rule as § 1926.1501 of subpart DD. It was OSHA's expressed purpose to

¹ OSHA published the final rule at 75 FR 47906 (Aug. 9, 2010).

² OSHA explained in the preamble to the final rule that the "redesignation of § 1926.550 and the replacement of references [to subpart N] do not alter any of the substantive requirements of §§ 1926.856(c) and 1926.858(b)" (75 FR 47921).

³ OSHA also inadvertently listed the heading of § 1926.858 as "Removal of walls, floors and materials with equipment" (the same heading as § 1926.856), instead of "Removal of steel construction," but this erroneous heading did not appear in the subsequent edition of the Code of Federal Regulations. Therefore, OSHA finds no need to address this error in this rulemaking.

⁴ Prior § 1926.550(g)(2) required employers to show, before using cranes to hoist personnel to a worksite, that conventional means would be more hazardous than cranes, or not possible, due to structural design or worksite conditions.

preserve the existing crane requirements for underground construction by changing references in the introductory paragraph of § 1926.800(t) from § 1926.550 and § 1926.500(g)(2) to § 1926.1501 and § 1926.1501(g)(2), respectively. OSHA clarified this purpose in the preamble to the final rule by stating that the revisions to § 1926.800(t) “do not alter any of the substantive requirements of § 1926.800(t)” (75 FR 47920). However, OSHA inadvertently changed § 1926.800(t) by amending the introductory paragraph to require employers engaged in underground construction to comply only with new § 1926.1501(g) (which duplicated § 1926.550(g)), instead of preserving the former routine-access exemption by requiring compliance with § 1926.1501 in its entirety, and modifying the requirements of § 1926.1501(g)(2) (which duplicated former § 1926.550(g)(2)).⁵ Additionally, OSHA inadvertently moved the language “Except as modified by paragraph (t)” to the beginning of the second sentence of the introductory paragraph so that it no longer applied to the cross-referenced § 1926.1501 requirements, but instead only applied to the cross-referenced requirements in § 1926.552(a) through (d). Finally, although OSHA did not plan to alter any of the (then remaining) requirements and exemptions of § 1926.800(t)(1) through (4), but only to amend the introductory paragraph, a technical error in the instructions to the **Federal Register** resulted in the deletion of subparagraphs § 1926.800(t)(1) through (4). The deletion was not mentioned in the preamble to the final cranes rule.

As amended by the final cranes rule, § 1926.800(t) presents four problems. First, the prior version of § 1926.800(t) incorporated all of § 1926.550, not just § 1926.550(g). However, the amended version of § 1926.800(t) refers only to § 1926.1501(g), the successor to § 1926.550(g). Therefore, as now written, § 1926.800(t) does not explicitly require employers to comply with either the final cranes rule or the prior rule at § 1926.550, except for § 1926.1501(g), the prior rule’s provision on hoisting personnel. Second, the exception from § 1926.550(g)(2), specified in the former version of § 1926.800(t), provided that employers could use cranes to hoist personnel for routine access to underground worksites via a shaft

without showing that other means of access are more hazardous or impossible. OSHA did not include this exception in the new version of § 1926.800(t). This inadvertent error places an additional and unnecessary burden on employers that use cranes for this purpose. Third, moving the text “Except as modified by paragraph (t)” to the beginning of the second sentence of the introductory paragraph of § 1926.800(t) results in ambiguity as to the relationship between incorporated crane requirements and the provisions in § 1926.800(t)(1) through (4). Finally, the inadvertent elimination of § 1926.800(t)(1) through (4) from the Code of Federal Regulations resulted in eliminating requirements that OSHA adopted in a 1989 rulemaking (54 FR 23843) to ensure that employees engaged in underground construction receive adequate protection from hazards unique to hoisting in this setting.

In this direct final rule, OSHA is amending § 1926.800(t) to extend subpart CC to underground construction, and to resolve the technical errors set forth in this section. OSHA is amending the introductory paragraph of § 1926.800(t) to restore the provision allowing employers to use cranes to hoist personnel for routine access to the underground worksites via a shaft without the need to show that conventional means of access are more hazardous or impossible for this purpose. This amendment excepts routine access of employees to an underground worksite via a shaft from the requirements of § 1926.1431(a). The requirements of § 1926.1431(a) are virtually identical to the requirements of § 1926.550(g)(2). In addition, OSHA is amending § 1926.800(t) by restoring the clause “Except as modified by this paragraph (t)” to the beginning of the introductory paragraph, and restoring § 1926.800(t)(1) through (4). OSHA is also revising the language in the introductory paragraph for clarity, and is correcting three minor grammatical errors that appeared in the text of paragraphs § 1926.800(t)(3)(vi), (t)(4)(iii), and (t)(4)(iv), as previously published in the Code of Federal Regulations.

D. Rationale for Extending Subpart CC to Demolition and Underground Construction

The revisions made by this direct final rule will enable OSHA to cover all cranes and derricks used in construction under subpart CC. These revisions implement the original purpose of the rule and will benefit both employees and employers. These revisions will

ensure that the significant benefits of subpart CC, which include saving 22 lives per year and preventing 175 non-fatal injuries per year compared to prior § 1926.550 (75 FR 48079), extend to demolition and underground construction. Accordingly, applying subpart CC to demolition and underground construction will ensure that construction workers in those sectors receive the same safety protections from new subpart CC as other construction workers.

The revisions also will benefit construction contractors that engage in underground construction or demolition work, in addition to other types of construction work, because these contractors will now be subject to a single standard rather than having some of their activities covered under subpart CC and other work covered by subpart DD. This action will avoid the confusion that would result if new subpart CC covers part of a project and revised § 1926.800(t) covers another part of the project. For example, in a cut-and-cover tunneling project, the underground construction standard applies only after covering the excavation in such a manner as to establish conditions characteristic of underground construction. 29 CFR 1926.800(a). Therefore, under the current requirements, subpart CC would apply to the work while the excavation is open, but after covering the excavation, subpart DD would apply, thereby resulting in the same crane or derrick being subject to different standards during different phases of the project. Finally, this action will facilitate employer compliance because demolition and underground construction contractors will no longer be subject to the outdated requirements in prior § 1926.550, which relied heavily on pre-1970 consensus standards.

IV. Agency Determinations

A. Final Economic Analysis and Final Regulatory Flexibility Analysis

When it issued the final cranes rule, OSHA prepared a final economic analysis (FEA) as required by the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651 *et seq.*) and Executive Order 12866 (58 FR 51735). OSHA also published a Final Regulatory Flexibility Analysis (FRFA) as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). OSHA’s approach to estimating costs and economic impacts in these analyses began by estimating, for all construction sectors, the total number of cranes and whether they were owned and rented;

⁵ OSHA stated in the final rule that it was including the reference to § 1926.1501(g) to avoid any potential notice problem that may arise if OSHA substituted a reference to subpart CC in place of the prior reference to § 1926.550(g) (75 FR 47920).

owned without rental; or leased. As a result, both analyses covered all cranes engaged in construction activities, including cranes engaged in underground construction and cranes engaged in construction work involving demolition. The FEA for the final cranes standard, which included all cranes, crane operations, and industry sectors subject to this direct final rule, found that the requirements of the rule were technologically and economically feasible.

Because the FEA drew these conclusions from calculations encompassing all of the underground construction and demolition crane operations covered by this direct final rule, the conclusions in the earlier FEA are valid for this direct final rule. The reference to the FEA for the final cranes rule, therefore, establishes that this direct final rule is technologically and economically feasible, addresses significant risks, and reduces those risks significantly. The FEA, which OMB reviewed, meets the requirements of Executive Orders 12866 and Executive Order 13563 with respect to the operations covered by this direct final rule; OSHA included these operations in the FEA for the final cranes standard. Therefore, OSHA believes that that this direct final rule also complies with Executive Orders 12866 and Executive Order 13563.

To determine if this direct final rule has annual costs of greater than \$100 million, or would have a significant economic impact on a substantial number of small firms, OSHA examined the sectors most affected by this direct final rule. This direct final rule affects two construction sectors: NAICS 237990 (Other Heavy and Civil Engineering Construction), which includes all establishments engaged in underground construction, and NAICS 238910 (Site Preparation Contractors), which includes all establishments engaged in demolition. This analysis, therefore, reviews the results for these two sectors reported in the final crane standard's FEA, which the **Federal Register** published on August 9, 2010.

That FEA simply considered all cranes and crane operations in these sectors, and did not analyze separately those operations involving underground construction or demolitions because OSHA planned to apply subpart CC to these operations. OSHA will report here the results for these entire sectors, which will inevitably involve greater costs and impacts than for the activities addressed in this direct final rule because both sectors have many cranes and crane jobs that do not involve underground construction or demolition

activities. Table B-9 of the FEA showed that NAICS 237990, which includes all crane operations involved in underground construction operations, had annualized compliance costs of \$1,903,569 for firms that own and rent cranes, \$205,532 for firms that own, but do not rent cranes, and \$1,151,759 for firms that lease cranes, for total annualized costs of \$3,260,860 (75 FR 48102-48105). Table B-9 also showed that NAICS 238910, which contains all crane operations involving demolitions, had annualized compliance costs of \$1,232,974 for firms that own and rent cranes, \$292,601 for firms that own, but do not rent cranes, and \$1,626,463 for firms that lease cranes, for total annualized compliance costs of \$3,152,038. The total annualized compliance costs for both sectors are \$6,412,898. Because these two NAICS sectors include operations not involved in underground construction or demolition, the total estimated annualized compliance costs of \$6,412,898 for these two sectors will be greater than the actual costs of this direct final rule. Based on these costs, OSHA concludes that this direct final rule is not a significant rule under either E.O. 12866 or the Unfunded Mandates Act.

With respect to technological feasibility, the earlier FEA, which included consideration of both underground construction and demolition operations, noted:

In accordance with the OSH Act, OSHA is required to demonstrate that occupational safety and health standards promulgated by the Agency are technologically feasible. Accordingly, OSHA reviewed the requirements that would be imposed by the final regulation, and assessed their technological feasibility. As a result of this review, OSHA has determined that compliance with the requirements of the final standard is technologically feasible for all affected industries. The standard would require employers to perform crane inspections, utilize qualified or certified crane operators, address ground conditions, maintain safe distances from power lines using the encroachment prevention precautions, and to fulfill other obligations under the standard. Compliance with all of these requirements can be achieved with readily and widely available technologies. Some businesses in the affected industries already implement the requirements of the standard to varying degrees (some states have requirements), as noted during the SBREFA Panel. OSHA believes that there are no technological constraints in complying with any of the proposed requirements, and received no comments that suggested that these standards were technologically infeasible.

(75 FR 48095).

In Table B-12 of the FEA for the final cranes rule, OSHA examined the costs as a percentage of revenues and as a percentage of profits in these two sectors. This table shows that, for both sectors, the greatest potential impacts were on establishments that own and rent cranes with operators. This table showed that for NAICS 237990, which includes all underground construction operations, costs were 0.18 percent (less than 1 percent) of revenues and 3.54 percent of profits. This table also showed that for NAICS 238910, including all demolition operations involving cranes, costs were 0.18 percent of revenues and 4.05 percent of profits. (Table B-12 and the FEA as a whole provide the full calculations and derivations.) The FEA from the final cranes standard stated:

The Agency concludes that the final standard is economically feasible for the affected industries. As described above, a standard is economically feasible if there is a reasonable likelihood that the estimated costs of compliance "will not threaten the existence or competitive structure of an industry, even if it does portend disaster for some marginal firms." *United Steelworkers of America v. Marshall*, 647 F.2d 1189, 1272 (D.C. Cir. 1980). The potential impacts on employer costs associated with achieving compliance with the final standard fall well within the bounds of economic feasibility in each industry sector. Costs of 0.2 percent of revenues and 4 percent of profits will not threaten the existence of the construction industry, affected general industry sectors, or the use of cranes in affected industry sectors. OSHA does not expect compliance with the requirements of the final standard to threaten the viability of employers or the competitive structure of any of the affected industry sectors. When viewed in the larger context of the construction sector, an increase in costs of \$148.2 million a year is effectively negligible, and will have no noticeable effect on the demand for construction services. Even when viewed as an increase in the costs of using cranes, an increase in the cost of rentals services of 0.2 percent will not cause the construction industry to forego the use of cranes and, thus, put crane leasing firms out of business.

(75 FR 48112). Because the earlier FEA drew this conclusion with respect to costs that included the costs of this direct final rule, as well as other costs that made the impacts greater than those of this direct final rule, OSHA concludes that the FEA for the cranes and derricks final rule demonstrates that this direct final rule is economically feasible.

Tables B-14 and B-15 of the FEA for the cranes and derricks final rule examined the costs as a percentage of revenues and as a percentage of profits in these two sectors for small firms as defined by SBA, and very small entities

with less than 20 employees, respectively. Because so many firms owning cranes are small, there is no appreciable difference between the impacts on small and very small firms versus the impacts for all firms already discussed. Comparison of the two tables shows that, for NAICS 237990, the impacts for very small firms were equal to or greater than those for small firms. Table B-15 shows that, for NAICS 237990, costs were 0.18 percent of revenues and 3.54 percent of profits. This table also shows that, for NAICS 238910, including all demolition operations involving cranes, there were no very small entities that owned and rented cranes, with the result that the greatest impacts are for small entities that own and rent crane where costs are 0.18 percent of revenues and 4.05 percent of profits.

In its regulatory flexibility analysis, OSHA generally defines a significant economic impact on small entities as one with costs in excess of one percent of revenues or five percent of profits. The possible costs of this direct final rule clearly are well below these thresholds. OSHA, therefore, certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act of 1995

When OSHA issued the final rule on August 9, 2010, it submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) titled *Cranes and Derricks in Construction* (29 CFR Part 1926, Subpart CC). This ICR⁶ covered all establishments in the construction industry, including all of the establishments in NAICS 237990 and NAICS 238910. On November 1, 2010, OMB approved the ICR under OMB control number 1218-0261, with an expiration date of November 30, 2013. Subsequently, in December 2010, OSHA discontinued the *Cranes and Derricks in Construction* (29 CFR 1926.550) ICR (OMB Control Number 1218-0113) because the new ICR superseded the existing ICR. In addition, OSHA retitled the new ICR to *Cranes and Derricks in Construction* (29 CFR Part 1926, Subpart CC and Subpart DD).⁷

⁶ The ICR is part of Exhibit 0425 in the docket for the final rule on cranes and derricks in construction (OSHA-2007-0066). It is available at www.regulations.gov and at www.reginfo.gov (OMB Control Number 1218-0261).

⁷ The request and OMB approval for discontinuing the previous *Cranes and Derricks in Construction* ICR (OMB Control Number 1218-0113) and the retitling of the ICR are available at www.reginfo.gov.

This direct final rule requires no additional collection of information.⁸ OMB's approval of OSHA's ICR under Control Number 1218-0261 already covers all collections of information required by this direct final rule, and OSHA does not believe it is necessary to submit a new ICR to OMB seeking to collect additional information under this direct final rule.

Interested parties who comment on OSHA's determination that this proposal contains no additional paperwork requirements must send their written comments to the Office of Management and Budget, Attn: OMB Desk Officer for OSHA, Room 10235, 726 Jackson Place NW., Washington, DC 20503. OSHA also encourages commenters to submit their comments on this paperwork determination to it, along with their other comments on the direct final rule.

OSHA notes that a Federal agency cannot conduct or sponsor a collection of information unless OMB approves it under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the agency displays a currently valid OMB control number. The public need not respond to a collection of information requirement unless the agency displays a currently valid OMB control number, and, notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information requirement if the requirement does not display a currently valid OMB control number.

C. Federalism

OSHA reviewed this direct final rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that Federal agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. Executive Order 13132 provides for preemption of state law only with the expressed consent of Congress. Federal agencies

⁸ Although the final rule for cranes and derricks in construction did not require employers covered by subpart DD to meet the information-exchange requirements of subpart CC, OSHA did not subtract these employers from its analysis of the burden and costs for these requirements in the paperwork analysis for subpart CC. Therefore, this approach inflated the burden and costs estimates of the ICR approved by OMB for subpart CC; however, the burden and costs estimates are accurate now that OSHA is applying subpart CC to underground construction and demolition work.

must limit any such preemption to the extent possible.

Under Section 18 of the OSH Act, Congress expressly provides that states may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards. States that obtain Federal approval for such a plan are referred to as "State Plan States." Occupational safety and health standards developed by State Plan States must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. 29 U.S.C. 667. Subject to these requirements, State Plan States are free to develop and enforce under state law their own requirements for safety and health standards.

OSHA previously concluded from its analysis that promulgation of subpart CC complies with Executive Order 13132. 75 FR 48128-29. That analysis applies to the extension of subpart CC to establishments engaged in demolition work and underground construction; therefore, this direct final rule complies with Executive Order 13132. In states without an OSHA-approved State Plan, any standard developed from this direct final rule would limit state policy options in the same manner as every standard promulgated by OSHA. In states with OSHA-approved State Plans, this rulemaking does not significantly limit state policy options.

D. State Plan States

When Federal OSHA promulgates a new standard or more stringent amendment to an existing standard, State Plan States must amend their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary, e.g., because an existing state standard covering this area is "at least as effective" as the new Federal standard or amendment. 29 CFR 1953.5(a). The state standard must be at least as effective as the final Federal rule. State Plan States must adopt the Federal standard or complete their own standard within six months of the promulgation date of the final Federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than an existing standard, State Plan States are not required to amend their standards, although OSHA may encourage them to do so. The 27 states and U.S. territories with OSHA-approved occupational safety and health plans are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina,

Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming; Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to state and local government employees only.

The amendments in this direct final rule will result in more stringent requirements for cranes and derricks used in demolition and underground construction work. Therefore, when OSHA promulgates a new final rule, states and territories with approved State Plans must adopt comparable amendments to their standards for cranes and derricks used in demolition and underground construction within six months of OSHA's promulgation of the final rule (*i.e.*, the date OSHA publishes confirmation of the effective date) unless they demonstrate that such a change is not necessary because their existing standards are already the same, or at least as effective, as OSHA's new final rule.

E. Unfunded Mandates Reform Act

When OSHA issued the final rule for cranes and derricks in construction, it reviewed the rule according to the Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.* (58 FR 58093)), and Executive Order 12875 (75 FR 48130). OSHA concluded that the final rule did not meet the definition of a "Federal intergovernmental mandate" under the UMRA because OSHA standards do not apply to state or local governments except in states that have voluntarily adopted State Plans. OSHA further noted that the rule imposed costs of over \$100 million per year on the private sector and, therefore, required review under the UMRA for those costs, but that its final economic analysis met that requirement.

As discussed above in Section IV.A (Final Economic Analysis and Final Regulatory Flexibility Analysis) of this preamble, this direct final rule does not impose any costs on private-sector employers beyond those costs already taken into account in the final rule for cranes and derricks in construction. Because OSHA reviewed the total costs of this final rule under the UMRA, no further review of those costs is necessary. Therefore, for the purposes of the UMRA, OSHA certifies that this direct final rule does not mandate that state, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than \$100 million in any year.

F. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this direct final rule in accordance with Executive Order 13175 (65 FR 67249) and determined that it does not have "tribal implications" as defined in that order. The final rule does not 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.

G. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) is "to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources." 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 654(b), 655(b). A safety or health standard is a standard "which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment." 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) when a significant risk of material harm exists in the workplace and the standard would substantially reduce or eliminate that workplace risk. See *Industrial Union Department, AFL-CIO v. American Petroleum Institute*, 448 U.S. 607 (1980). In the cranes and derricks final rule, OSHA made such a determination with respect to the use of cranes and derricks in construction at the same time that it noted that the Agency would apply subpart CC to the activities addressed in this direct final rule (75 FR 47913, 47920–21).

This direct final rule will not reduce the employee protections put into place by the standard OSHA is updating under this rulemaking. Instead, this rulemaking likely will enhance employee safety by ensuring that the construction workers involved in demolition and underground construction receive the same safety protections from recently published subpart CC as other construction workers. The revisions also will benefit construction contractors that engage in underground construction or demolition work in addition to other types of construction work, because these contractors will now be subject to a

single standard rather than having some of their construction work under subpart CC, and other work covered by existing subpart DD. This action, therefore, will clarify employer obligations by avoiding the confusion that would result if subpart CC covers part of a project and existing subpart DD covers another part of the project. Accordingly, it is unnecessary to make a separate determination of significant risk, or the extent to which this rule would reduce that risk, as typically required by the *Industrial Union Department*.

List of Subjects in 29 CFR Part 1926

Construction industry, Demolition, Occupational safety and health, Safety, Underground construction.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, authorized the preparation of this notice. OSHA is issuing this direct final rule under the following authorities: 29 U.S.C. 653, 655, 657; 40 U.S.C. 3701 *et seq.*; 5 U.S.C. 553; Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012); and 29 CFR part 1911.

Signed at Washington, DC, on August 8, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Standards

For the reasons stated in the preamble of this direct final rule, OSHA is amending 29 CFR part 1926 as follows:

PART 1926—[AMENDED]

Subpart S—Underground Construction, Caissons, Cofferdams, and Compressed Air

- 1. Revise the authority citation for subpart S of 29 CFR part 1926 to read as follows:

Authority: 40 U.S.C. 3701; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 5–2007 (72 FR 31159), or 1–2012 (77 FR 3912), as applicable.

- 2. Amend § 1926.800 by revising paragraph (t) to read as follows:

§ 1926.800 Underground construction.

* * * * *

(t) *Hoisting unique to underground construction.* Except as modified by this paragraph (t), employers must: Comply with the requirements of subpart CC of

this part, except that the limitation in § 1926.1431(a) does not apply to the routine access of employees to an underground worksite via a shaft; ensure that material hoists comply with § 1926.552(a) and (b) of this part; and ensure that personnel hoists comply with the personnel-hoists requirements of § 1926.552(a) and (c) of this part and the elevator requirements of § 1926.552(a) and (d) of this part.

(1) *General requirements for cranes and hoists.* (i) Materials, tools, and supplies being raised or lowered, whether within a cage or otherwise, shall be secured or stacked in a manner to prevent the load from shifting, snagging or falling into the shaft.

(ii) A warning light suitably located to warn employees at the shaft bottom and subsurface shaft entrances shall flash whenever a load is above the shaft bottom or subsurface entrances, or the load is being moved in the shaft. This paragraph does not apply to fully enclosed hoistways.

(iii) Whenever a hoistway is not fully enclosed and employees are at the shaft bottom, conveyances or equipment shall be stopped at least 15 feet (4.57 m) above the bottom of the shaft and held there until the signalman at the bottom of the shaft directs the operator to continue lowering the load, except that the load may be lowered without stopping if the load or conveyance is within full view of a bottom signalman who is in constant voice communication with the operator.

(iv)(A) Before maintenance, repairs, or other work is commenced in the shaft served by a cage, skip, or bucket, the operator and other employees in the area shall be informed and given suitable instructions.

(B) A sign warning that work is being done in the shaft shall be installed at the shaft collar, at the operator's station, and at each underground landing.

(v) Any connection between the hoisting rope and the cage or skip shall be compatible with the type of wire rope used for hoisting.

(vi) Spin-type connections, where used, shall be maintained in a clean condition and protected from foreign matter that could affect their operation.

(vii) Cage, skip, and load connections to the hoist rope shall be made so that the force of the hoist pull, vibration, misalignment, release of lift force, or impact will not disengage the connection. Moused or latched open-throat hooks do not meet this requirement.

(viii) When using wire rope wedge sockets, means shall be provided to prevent wedge escapement and to

ensure that the wedge is properly seated.

(2) *Additional requirements for cranes.* Cranes shall be equipped with a limit switch to prevent overtravel at the boom tip. Limit switches are to be used only to limit travel of loads when operational controls malfunction and shall not be used as a substitute for other operational controls.

(3) *Additional requirements for hoists.* (i) Hoists shall be designed so that the load hoist drum is powered in both directions of rotation, and so that brakes are automatically applied upon power release or failure.

(ii) Control levers shall be of the "deadman type" which return automatically to their center (neutral) position upon release.

(iii) When a hoist is used for both personnel hoisting and material hoisting, load and speed ratings for personnel and for materials shall be assigned to the equipment.

(iv) Material hoisting may be performed at speeds higher than the rated speed for personnel hoisting if the hoist and components have been designed for such higher speeds and if shaft conditions permit.

(v) Employees shall not ride on top of any cage, skip or bucket except when necessary to perform inspection or maintenance of the hoisting system, in which case they shall be protected by a body belt/harness system to prevent falling.

(vi) Personnel and materials (other than small tools and supplies secured in a manner that will not create a hazard to employees) shall not be hoisted together in the same conveyance. However, if the operator is protected from the shifting of materials, then the operator may ride with materials in cages or skips which are designed to be controlled by an operator within the cage or skip.

(vii) Line speed shall not exceed the design limitations of the systems.

(viii) Hoists shall be equipped with landing level indicators at the operator's station. Marking the hoist rope does not satisfy this requirement.

(ix) Whenever glazing is used in the hoist house, it shall be safety glass, or its equivalent, and be free of distortions and obstructions.

(x) A fire extinguisher that is rated at least 2A:10B:C (multi-purpose, dry chemical) shall be mounted in each hoist house.

(xi) Hoist controls shall be arranged so that the operator can perform all operating cycle functions and reach the emergency power cutoff without having to reach beyond the operator's normal operating position.

(xii) Hoists shall be equipped with limit switches to prevent overtravel at the top and bottom of the hoistway.

(xiii) Limit switches are to be used only to limit travel of loads when operational controls malfunction and shall not be used as a substitute for other operational controls.

(xiv) Hoist operators shall be provided with a closed-circuit voice communication system to each landing station, with speaker microphones so located that the operator can communicate with individual landing stations during hoist use.

(xv) When sinking shafts 75 feet (22.86 m) or less in depth, cages, skips, and buckets that may swing, bump, or snag against shaft sides or other structural protrusions shall be guided by fenders, rails, ropes, or a combination of those means.

(xvi) When sinking shafts more than 75 feet (22.86 m) in depth, all cages, skips, and buckets shall be rope or rail guided to within a rail length from the sinking operation.

(xvii) Cages, skips, and buckets in all completed shafts, or in all shafts being used as completed shafts, shall be rope or rail-guided for the full length of their travel.

(xviii) Wire rope used in load lines of material hoists shall be capable of supporting, without failure, at least five times the maximum intended load or the factor recommended by the rope manufacturer, whichever is greater. Refer to § 1926.552(c)(14)(iii) of this part for design factors for wire rope used in personnel hoists. The design factor shall be calculated by dividing the breaking strength of wire rope, as reported in the manufacturer's rating tables, by the total static load, including the weight of the wire rope in the shaft when fully extended.

(xix) A competent person shall visually check all hoisting machinery, equipment, anchorages, and hoisting rope at the beginning of each shift and during hoist use, as necessary.

(xx) Each safety device shall be checked by a competent person at least weekly during hoist use to ensure suitable operation and safe condition.

(xxi) In order to ensure suitable operation and safe condition of all functions and safety devices, each hoist assembly shall be inspected and load-tested to 100 percent of its rated capacity: at the time of installation; after any repairs or alterations affecting its structural integrity; after the operation of any safety device; and annually when in use. The employer shall prepare a certification record which includes the date each inspection and load-test was performed; the signature of the person

who performed the inspection and test; and a serial number or other identifier for the hoist that was inspected and tested. The most recent certification record shall be maintained on file until completion of the project.

(xxii) Before hoisting personnel or material, the operator shall perform a test run of any cage or skip whenever it has been out of service for one complete shift, and whenever the assembly or components have been repaired or adjusted.

(xxiii) Unsafe conditions shall be corrected before using the equipment.

(4) *Additional requirements for personnel hoists.* (i) Hoist drum systems shall be equipped with at least two means of stopping the load, each of which shall be capable of stopping and holding 150 percent of the hoist's rated line pull. A broken-rope safety, safety catch, or arrestment device is not a permissible means of stopping under this paragraph.

(ii) The operator shall remain within sight and sound of the signals at the operator's station.

(iii) All sides of personnel cages shall be enclosed by one-half inch (12.70 mm) wire mesh (not less than No. 14 gauge or equivalent) to a height of not less than 6 feet (1.83 m). However, when the cage or skip is being used as a work platform, its sides may be reduced in height to 42 inches (1.07 m) when the conveyance is not in motion.

(iv) All personnel cages shall be provided with a positive locking door that does not open outward.

(v) All personnel cages shall be provided with a protective canopy. The canopy shall be made of steel plate, at least 3/16-inch (4.763 mm) in thickness, or material of equivalent strength and impact resistance. The canopy shall be sloped to the outside, and so designed that a section may be readily pushed upward to afford emergency egress. The canopy shall cover the top in such a manner as to protect those inside from objects falling in the shaft.

(vi) Personnel platforms operating on guide rails or guide ropes shall be equipped with broken-rope safety devices, safety catches or arrestment devices that will stop and hold 150 percent of the weight of the personnel platform and its maximum rated load.

(vii) During sinking operations in shafts where guides and safeties are not yet used, the travel speed of the personnel platform shall not exceed 200 feet (60.96 m) per minute. Governor controls set for 200 feet (60.96 m) per minute shall be installed in the control system and shall be used during personnel hoisting.

(viii) The personnel platform may travel over the controlled length of the hoistway at rated speeds up to 600 feet (182.88 m) per minute during sinking operations in shafts where guides and safeties are used.

(ix) The personnel platform may travel at rated speeds greater than 600 feet (182.88 m) per minute in completed shafts.

* * * *

Subpart T—Demolition.

■ 3. Revise the authority citation for subpart T of 29 CFR part 1926 to read as follows:

Authority: 40 U.S.C. 3701; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 5-2007 (72 FR 31159), or 1-2012 (77 FR 3912), as applicable.

■ 4. Amend § 1926.856 by revising paragraph (c) to read as follows:

§ 1926.856 Removal of walls, floors, and material with equipment.

* * * *

(c) Cranes, derricks, and other mechanical equipment used must meet the requirements specified in subparts N, O, and CC of this part.

■ 5. Amend § 1926.858 by revising paragraph (b) to read as follows:

§ 1926.858 Removal of steel construction.

* * * *

(b) Cranes, derricks, and other hoisting equipment used must meet the requirements specified in subparts N and CC of this part.

* * * *

Subpart DD—[Removed]

■ 6. Remove subpart DD.

[FR Doc. 2012-20171 Filed 8-16-12; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0043]

RIN 1625-AA00

Safety Zone; Antique Boat Show, Niagara River, Grand Island, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will establish a temporary safety zone on

Niagara River, Grand Island, NY. This safety zone is intended to restrict vessels from a portion of the Niagara River during the Antique Boat Show powerboat races. This safety zone is necessary to protect spectators, participants, and vessels from the hazards associated with powerboat races.

DATES: This regulation will be effective on September 8, 2012 from 9:30 a.m. until 4:30 p.m.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket USCG-2012-0043 and are available online at www.regulations.gov. This material is also available for inspection or copying at two locations: 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 and the U.S. Coast Guard Sector Lake Michigan, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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:

Regulatory Information

On March 7, 2012, we published a notice of proposed rulemaking entitled Safety Zone; Antique Boat Show, Niagara River, Grand Island, NY in the **Federal Register** (77 FR 13516). 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 finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the date of the event, waiting for 30 day notice period run would be impracticable.

Background and Purpose

Between 10 a.m. and 4 p.m. on Sept. 8, 2012 a series of hydroplane and power boat races will take place on the Niagara River near Grand Island, NY.

The Captain of the Port Buffalo has determined that hydroplane racing presents significant hazards to public spectators and participants.

Discussion of Rule

This temporary safety zone is necessary to ensure the safety of spectators and vessels during the Antique Boat Show.

The safety zone will be effective and enforced from 9:30 a.m. until 4:30 p.m. on September 8, 2012.

The safety zone will encompass all waters of Niagara River, Grand Island, NY starting at position 42°59'59" N, 078°56'22" W, East to 49°59'54" N, 078°56'14" W, South to 42°57'54" N, 078°56'04" W, West to 42°05'48" N, 078°56'22" 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 on-scene representative. The Captain of the Port or his 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, 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.

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 would not have a significant economic impact on a substantial number of small entities.

This temporary final rule may affect the following entities, some of which might be small entities: The owners of operators of vessels intending to transit or anchor in a portion of the Niagara River near Grand Island, New York between 9:30 a.m. to 4:30 p.m. on September 8, 2012.

This safety zone 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 a few hours and the safety zone will allow vessels to move freely around the safety zone on the Niagara 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.

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 so that they can better evaluate its effects on them and participate in the rulemaking.

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.

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.

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 would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This 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.

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 would 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 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.

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

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 M16475.1D, 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 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 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**.

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.T09–0043 to read as follows:

§ 165.T09–0043 Safety Zone; Antique Boat Show, Niagara River, Grand Island, NY.

(a) *Location.* The safety zone will encompass all waters of the Niagara River, Grand Island, NY starting at position 42°59′59″ N, 078°56′22″ W, East to 42°59′54″ N, 078°56′14″ W, South to 42°57′54″ N, 078°56′04″ W, West to 42°05′48″ N, 078°56′22″ W. (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced on September 8, 2012 from 9:30 a.m. until 4:30 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. 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: April 16, 2012.

S.M. Wischmann,

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

[FR Doc. 2012–20188 Filed 8–16–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0394; FRL–9359–7]

Cyprodinil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of cyprodinil in or on multiple commodities which are identified and discussed later in this document, associated with Pesticide Petition (PP) 1E7854, and establishes a tolerance in or on leaf petioles subgroup 4B, associated with PP 1E7869. Interregional Research Project Number 4 (IR–4) and Syngenta Crop Protection requested the tolerances associated with PP 1E7854 and 1E7869, respectively, under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 17, 2012. Objections and requests for hearings must be received on or before October 16, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the

SUPPLEMENTARY INFORMATION).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0394, is available either electronically through <http://www.regulations.gov> or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; email address: Nollen.Laura@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural

producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2011-0394 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 16, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA-HQ-OPP-2011-0394, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200

Pennsylvania Ave. NW., Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.htm>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 20, 2011 (76 FR 43231) (FRL-8880-1), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of PP 1E7854 by IR-4, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.532 be amended by establishing tolerances for residues of the fungicide cyprodinil, 4-cyclopropyl-6-methyl-N-phenyl-2-pyrimidinamine, in or on onion, bulb, subgroup 3-07A at 0.6 parts per million (ppm); onion, green, subgroup 3-07B at 4.0 ppm; caneberry subgroup 13-07A at 10.0 ppm; bushberry subgroup 13-07B at 3.0 ppm; fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13-07F at 2.0 ppm; berry, low growing, subgroup 13-07G, except cranberry at 5.0 ppm; dragon fruit at 2.0 ppm; fruit, pome, group 11-10 at 1.7 ppm; vegetable, fruiting, group 8-10 at 1.3 ppm; and leafy greens subgroup 4A at 40 ppm.

Upon approval of the aforementioned tolerances, the petition additionally requested amendment of 40 CFR 180.532 by removing the established tolerances for the residues of cyprodinil in or on onion, bulb at 0.60 ppm; onion, green at 4.0 ppm; caneberry subgroup 13A at 10 ppm; bushberry subgroup 13B at 3.0 ppm; Juneberry at 3.0 ppm; lingonberry at 3.0 ppm; salal at 3.0 ppm; grape at 2.0 ppm; strawberry at 5.0 ppm; fruit, pome at 1.7 ppm; tomatillo at 0.45 ppm; tomato at 0.45 ppm; and leafy greens subgroup 4A, except spinach at 30 ppm. The published notice of the petition referenced a summary of the petition prepared on behalf of IR-4 by Syngenta Crop Protection, Inc., the registrant, which is available in the docket, <http://www.regulations.gov>. There were no comments received in response to this notice of filing.

In the **Federal Register** of April 4, 2012 (77 FR 20334) (FRL-9340-4), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of PP 1E7869 by Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27409. The

petition requested that 40 CFR 180.532 be amended by establishing tolerances for residues of the fungicide cyprodinil in or on leafy petioles subgroup 4B at 30 parts per million. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available in the docket, <http://www.regulations.gov>. One comment was received to this notice of filing. EPA's response to the comment is discussed in Unit IV.C.

Based upon review of the data supporting the petitions, EPA has revised the proposed tolerance levels for several commodities. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue* * *."

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for cyprodinil including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with cyprodinil follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable

subgroups of consumers, including infants and children.

Cyprodinil has low acute toxicity via the oral, dermal, and inhalation routes of exposure. Cyprodinil is mildly irritating to the eyes and negligibly irritating to the skin. It is a dermal sensitizer. The major target organs of cyprodinil are the liver in both rats and mice and the kidney in rats. Liver effects observed consistently in subchronic and chronic studies in rats and mice included increased liver weights and increases in serum clinical chemistry parameters associated with adverse effects on liver function, hepatocyte hypertrophy, and hepatocellular necrosis. Adverse kidney effects included tubular lesions and inflammation following subchronic exposure of male rats. The hematopoietic system also appeared to be a target of cyprodinil, causing mild anemia following subchronic exposure to cyprodinil in rats. Chronic effects in dogs were limited to decreased body weight gain, decreased food consumption and decreased food efficiency.

Fetal toxicity reported in developmental toxicity studies in the rat included significantly lower fetal weights and an increased incidence of delayed ossification in the rat and showed a slight increase in litters showing extra ribs in the rabbit. In a rat 2-generation reproduction study, significantly lower pup weights were observed in F₁ and F₂ offspring. However, each of these fetal and neonatal effects occurred at the same dose levels at which maternal toxicity (decreased body weight gain) was

observed, and the effects were considered to be secondary to maternal toxicity.

In an acute neurotoxicity study in rats, clinical signs, hypothermia, and changes in motor activity were all found to be reversible and no longer seen at day 8 and 15 investigations. There were no treatment related effects on mortality, gross or histological neuropathology. Reduced motor activity, induced hunched posture, piloerection and reduced responsiveness to sensory stimuli were observed and disappeared in all animals by day 3 to 4. The subchronic neurotoxicity study in rats, showed no treatment-related effects related to neurotoxicity. An immunotoxicity study in mice resulted in no apparent suppression of the humoral component of the immune system. There was no evidence of carcinogenic potential in either the rat chronic toxicity/carcinogenicity or mouse carcinogenicity studies.

Specific information on the studies received and the nature of the adverse effects caused by cyprodinil as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov> in document: "Cyprodinil: Expansions of Existing Crop Group/Representative Commodity Uses to Numerous Crop Subgroups, Adding Use on Leafy Petiole Subgroup 4B, and Adding Use on the Remaining Crops in Fruiting Vegetables Group 8–10." pp 34–38 in docket ID number EPA-HQ-OPP-2011-0394."

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern (LOC) to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors (U/SF) are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www.epa.gov/pesticides/factsheets/riskassess.htm>. A summary of the toxicological endpoints for cyprodinil used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CYPRODINIL FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary All populations) ...	NOAEL = 200 mg/kg/day. UF _A = 10x UF _H = 10x FQPA SF = 1x	Acute RfD = 2.0 mg/kg/day. aPAD = 2.0 mg/kg/day	Acute Neurotoxicity—Rat LOAEL = 600 mg/kg/day based on clinical signs of toxicity (hunched posture, piloerection, and reduced responsiveness to sensory stimuli, reduced motor activity and hypothermia).
Chronic dietary (All populations)	NOAEL = 2.7 mg/kg/day. UF _A = 10x UF _H = 10x FQPA SF = 1x	Chronic RfD = 0.027 mg/kg/day. cPAD = 0.027 mg/kg/day	2-Year Chronic Toxicity/Carcinogenicity—rat LOAEL = 35.6 mg/kg/day based on degenerative liver lesions (spongiosis hepatitis) in males.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CYPRODINIL FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Inhalation short-term (1 to 30 days).	Inhalation (or oral) study NOAEL = 62 mg/kg/day (inhalation absorption rate = 100%). UF _A = 10x UF _H = 10x FQPA SF = 10x	LOC for MOE = 1,000.	28-Day Feeding/Range-Finding—Rat LOAEL = 299 mg/kg/day based on decreased body-weight gain, increased cholesterol and phospholipid levels, microcytosis, and hepatocyte hypertrophy.
Cancer (Oral, dermal, inhalation).	Not likely to be carcinogenic to humans.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to cyprodinil, EPA considered exposure under the petitioned-for tolerances as well as all existing cyprodinil tolerances in 40 CFR 180.532.

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for cyprodinil. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance-level residues, 100 percent crop treated (PCT) estimates, and Dietary Exposure Evaluation Model (DEEM™ (ver. 7.81)) default processing factors.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed tolerance-level residues for most commodities; average field trial residues for pome fruit, head lettuce, leaf lettuce, and grapes; and 100 PCT estimates. DEEM™ (ver. 7.81) default and empirical processing factors for tomato paste/puree (1x) and lemon/lime juice (1x) were used to modify the tolerance values.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that cyprodinil does not pose

a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for cyprodinil in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of cyprodinil. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of cyprodinil for surface water are expected to be 34.79 parts per billion

(ppb) for acute exposures and 24.65 ppb for chronic exposures. The EDWCs of cyprodinil for ground water are expected to be 0.0861 ppb for acute and chronic exposures.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 34.79 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 24.65 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Cyprodinil is currently registered for the following uses that could result in residential exposures: Ornamental landscapes. EPA assessed residential exposure using the following assumptions: Short-term inhalation exposures to residential handlers are expected from application to ornamental landscapes. Dermal exposures were not assessed, since there is no dermal POD. Residential handler exposure scenarios are considered to be short-term only, due to the infrequent use patterns associated with homeowner products. Postapplication exposures are not expected. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at <http://www.epa.gov/pesticides/trac/science/trac6a05.pdf>.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA

requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider “available information” concerning the cumulative effects of a particular pesticide’s residues and “other substances that have a common mechanism of toxicity.”

EPA has not found cyprodinil to share a common mechanism of toxicity with any other substances, and cyprodinil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that cyprodinil does not have a common mechanism of toxicity with other substances. For information regarding EPA’s efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA’s Web site at <http://www.epa.gov/pesticides/cumulative>.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The cyprodinil toxicity database is adequate to evaluate potential increased susceptibility of infants and children, and includes developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in rats. In a rat developmental toxicity study, there were significantly lower mean fetal weights in the high dose group compared to controls as well as a significant increase in skeletal anomalies in the high dose group due to abnormal ossification. The skeletal anomalies/ variations were considered to be a transient developmental delay that occurred secondary to the maternal toxicity noted in the high dose group. In the rabbit study, the only treatment related developmental effect was the indication of an increased incidence of a 13th rib at maternally toxic doses. Signs of fetal effects in the reproductive

toxicity study included significantly lower F1 and F2 pup weights in the high dose group during lactation, which continued to be lower than controls post-weaning and after the pre-mating period in the F1 generation. Reproductive effects were seen only at doses that also caused parental toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X for non-inhalation exposure scenarios. For inhalation exposure scenarios for all population groups, EPA is retaining a 10X FQPA SF. That decision is based on the following findings:

i. The toxicity database for cyprodinil is complete except for a 90-day inhalation toxicity study. In the absence of inhalation data, EPA is relying on an oral study for estimating risk from inhalation exposures. EPA evaluation of use of oral studies to extrapolate an inhalation endpoint has shown that such extrapolation may understate risk. Accordingly, to address the uncertainty caused by extrapolating an inhalation endpoint from an oral study for cyprodinil, EPA has concluded that the 10X FQPA SF should be retained for risk assessments involving inhalation exposure.

ii. In the subchronic neurotoxicity study in rats, there was no indication that cyprodinil is a neurotoxic chemical. In an acute neurotoxicity study in rats, clinical signs, hypothermia, and changes in motor activity were all found to be reversible and no longer seen at day 8 and 15 investigations. There were no treatment related effects on mortality or gross or histological neuropathology. Reduced motor activity, induced hunched posture, piloerection and reduced responsiveness to sensory stimuli were observed and disappeared in all animals by day 3 to 4. Based on this evidence, there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. In the prenatal developmental toxicity studies in rats and rabbits and the 2-generation reproduction study in rats, toxicity to the fetuses and/or offspring, when observed, occurred at the same doses at which effects were observed in maternal/parental animals. Additionally, the skeletal anomalies/ variations were considered to be a transient developmental delay that occurred secondary to the maternal toxicity noted in the high dose group. Therefore, there is no evidence that cyprodinil results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or

in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary food exposure assessment was performed based on 100 PCT and tolerance-level residues. The chronic dietary food exposure assessment was partially refined, assuming average field trial residues and empirical processing factors for some commodities, and tolerance level residues and DEEM™ (ver. 7.81) default for the remaining commodities. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to cyprodinil in drinking water. Based on the discussion in Unit III.C.3, postapplication exposure of children as well as incidental oral exposure of toddlers is not expected. These assessments will not underestimate the exposure and risks posed by cyprodinil.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to cyprodinil will occupy 8.2% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to cyprodinil from food and water will utilize 75% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of cyprodinil is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Cyprodinil is currently registered for uses that could result in

short-term residential exposure to adults, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to cyprodinil. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOE of 9,000. Because EPA's level of concern for cyprodinil is a MOE of 1,000 or below, these MOEs are not of concern.

4. Intermediate-term risk.

Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, cyprodinil is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for cyprodinil.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, cyprodinil is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to cyprodinil residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate high performance liquid chromatography, using ultra-violet detection (HPLC/UV) methods (Methods AG-631 and AG-631B) are available to enforce the tolerance expression of cyprodinil in/on plant commodities.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; email address: residuemethods@epa.gov.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established MRLs for cyprodinil in or on several commodities that are not harmonized with the tolerances being established in the United States, as follows: Codex MRL on eggplant at 0.2 ppm, pepper at 0.5 ppm, and tomato at 0.5 ppm and U.S. tolerance on vegetable, fruiting, group 8-10 at 1.5 ppm; Codex MRL on onion, bulb at 0.3 ppm and U. S. tolerance on onion, bulb, subgroup 3-07A at 0.6 ppm; Codex MRL on black and red raspberry at 0.5 ppm and U.S. tolerance on caneberry subgroup 13-07A at 10 ppm; Codex MRL on head and leaf lettuce at 10 ppm and U. S. tolerance on leafy greens subgroup 4A at 50 ppm; and Codex MRLs on apple at 0.05 ppm and pear at 1 ppm and U. S. tolerance on fruit, pome, group 11-10 at 1.7 ppm. The United States tolerance recommendations cannot be harmonized with the Codex MRLs established for cyprodinil because the residue data supporting the tolerance necessitate a higher value.

Additionally, Codex has an established MRL on grape at 3 ppm and dried grapes at 5 ppm. The EPA is establishing the tolerance for fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13-07F (for which grape is the representative commodity) at 3 ppm and grape, raisin at 5 ppm in order to harmonize with the Codex MRLs. Codex has not established MRLs on the other commodities associated with these petitions.

C. Response to Comments

One comment was received to the Notice of Filing for PP 1E7869, which requested additional information about the nature of the residue and the

adverse effects noted from exposure to cyprodinil. Specific information on the nature of the residue, including physical and chemical characteristics, as well as the adverse effects caused by cyprodinil from the toxicity studies can be found in the supporting and related material at <http://www.regulations.gov> in docket ID number EPA-HQ-OPP-2011-0394.

D. Revisions to Petitioned-For Tolerances

Based on the data supporting the petitions, EPA has revised the proposed tolerance on vegetable, fruiting, group 8-10 from 1.3 ppm to 1.5 ppm; and leafy greens subgroup 4A from 40 ppm to 50 ppm. The Agency revised these tolerance levels based on analysis of the residue field trial data using the Organization for Economic Co-operation and Development (OECD) tolerance calculation procedures.

Additionally, the Agency revised the proposed tolerance in or on fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13-07F from 2.0 ppm to 3.0 ppm in order to harmonize with the established Codex MRL on grape at 3 ppm. The Agency has also revised the established tolerance in or on grape, raisin from 3.0 ppm to 5.0 ppm in order to align with the Codex MRL on dried grapes at 5 ppm.

EPA determined that the established tolerance on tomato, paste at 1.0 ppm should be removed, as it will be superseded by the tolerance in or on fruiting vegetable group 8-10 tolerance at 1.5 ppm.

V. Conclusion

Therefore, tolerances are established for residues of cyprodinil, 4-cyclopropyl-6-methyl- N-phenyl-2-pyrimidinamine, in or on onion, bulb, subgroup 3-07A at 0.6 ppm; onion, green, subgroup 3-07B at 4.0 ppm; caneberry subgroup 13-07A at 10 ppm; bushberry subgroup 13-07B at 3.0 ppm; fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13-07F at 3.0 ppm; grape, raisin at 5.0 ppm; berry, low growing, subgroup 13-07G, except cranberry at 5.0 ppm; vegetable, fruiting, group 8-10 at 1.5 ppm; leafy greens subgroup 4A at 50 ppm; fruit, pome, group 11-10 at 1.7 ppm; dragon fruit at 2.0 ppm; and leaf petioles subgroup 4B at 30 ppm. Additionally, the established tolerance on citrus, oil is amended from 340 ppm to 60 ppm. Finally, this regulation removes tolerances of cyprodinil in or on onion, bulb at 0.60 ppm; onion, green at 4.0 ppm; caneberry subgroup 13A at 10 ppm; bushberry subgroup 13B at 3.0 ppm; grape at 2.0 ppm; strawberry at 5.0 ppm; tomato at 0.45 ppm; Juneberry at 3.0 ppm;

lingonberry at 3.0 ppm; salal at 3.0 ppm; tomatillo at 0.45 ppm; fruit, pome at 1.7 ppm; leafy greens subgroup 4A, except spinach at 30 ppm; and tomato, paste at 1.0 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined

that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 10, 2012.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

- 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

- 2. In § 180.532, the table in paragraph (a)(1) is revised to read as follows:

§ 180.532 Cyprodinil; tolerances for residues.

- (a) * * *
- (1) * * *

Commodity	Parts per million
Almond	0.02
Almond, hulls	8.0
Apple, wet pomace	4.6
Avocado	1.2
Bean, dry	0.6
Bean, succulent	0.6
Berry, low growing, subgroup 13–07G, except cranberry	5.0
Brassica, head and stem, subgroup 5A	1.0
Brassica, leafy greens, subgroup 5B	10.0
Bushberry subgroup 13–07B	3.0
Caneberry subgroup 13–07A	10
Canistel	1.2
Canola, seed ¹	0.03
Citrus, dried pulp	8.0
Citrus, oil	60
Dragon fruit	2.0
Fruit, pome, group 11–10	1.7
Fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F	3.0
Fruit, stone, group 12	2.0
Grape, raisin	5.0
Herb subgroup 19A, dried, except parsley	15.0
Herb subgroup 19A, fresh, except parsley	3.0
Kiwifruit	1.8
Leaf petioles subgroup 4B	30
Leafy greens subgroup 4A	50
Lemon	0.60
Lime	0.60
Longan	2.0
Lychee	2.0
Mango	1.2
Onion, bulb, subgroup 3–07A	0.6
Onion, green, subgroup 3–07B	4.0
Papaya	1.2
Parsley, dried leaves	170
Parsley, leaves	35
Pistachio	0.10
Pulasan	2.0
Rambutan	2.0
Sapodilla	1.2
Sapote, black	1.2
Sapote, mamey	1.2
Spanish lime	2.0
Star apple	1.2
Turnip, greens	10.0
Vegetable, cucurbit, group 9	0.70
Vegetable, fruiting, group 8–10	1.5
Vegetable, leaves of root and tuber, group 2	10
Vegetable, root, except sugar-beet, subgroup 1B	0.75
Watercress	20

¹ Import only.

* * * * *

[FR Doc. 2012–20235 Filed 8–16–12; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 77, No. 160

Friday, August 17, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE-2012- BT-STD-0027]

RIN 1904-AC81

Energy Conservation Standards for Residential Dehumidifiers: Public Meeting and Availability of the Framework Document

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

ACTION: Notice of public meeting and availability of the framework document.

SUMMARY: The Department of Energy (DOE) issues a framework document to consider whether to amend the energy conservation standards for residential dehumidifiers. DOE also announces a public meeting to discuss and receive comments on issues that it will address in this rulemaking proceeding. DOE is initiating data collection for considering amended energy conservation standards for residential dehumidifiers. DOE also encourages written comments on potential amended standards, including comments on the issues identified in the framework document. The framework document, which is intended to inform stakeholders and facilitate the rulemaking process, is available at http://www1.eere.energy.gov/buildings/appliance_standards/residential/dehumidifiers.html.

DATES: DOE will hold a public meeting on September 24, 2012, from 1 p.m. to 4 p.m. in Washington, DC. Any person requesting to speak at the public meeting should submit such request along with a signed original and an electronic copy of the statements to be given at the public meeting before 4 p.m., September 10, 2012. Written comments are welcome, especially following the public meeting, and should be submitted by September 17, 2012.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy,

Forrestal Building, 8E-089, 1000 Independence Avenue SW., Washington, DC 20585-0121. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586-2945 so that the necessary procedures can be completed.

Stakeholders may submit comments, identified by docket number EERE-2012- BT-STD-0027 and/or Regulation Identifier Number (RIN) 1904-AC81, by any of the following methods:

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

- *Email:* ResDehumidifier2012STD0027@ee.doe.gov. Include docket number EERE-2012- BT-STD-0027 and/or RIN 1904-AC81 in the subject line of the message.

- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue SW., Washington, DC 20585-0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Phone: (202) 586-2945. Please submit one signed paper original. If possible, please submit all items on a CD. It is not necessary to include printed copies.

- *Docket:* The docket is available for review at <http://www.regulations.gov>, and will include **Federal Register** notices, framework document, notice of proposed rulemaking, public meeting attendee lists and transcripts, comments, and other supporting documents/materials throughout the rulemaking process. The docket can be accessed by searching for Docket No. EERE-2012- BT-STD-0027 at the [regulations.gov](http://www.regulations.gov) Web site.

For further information on how to submit or review public comments or view hard copies of the docket in the Resource Room, contact Ms. Brenda Edwards at (202) 586-2945 or email: Brenda.Edwards@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Witkowski, U.S. Department of

Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE-2J, 1000 Independence Avenue SW., Washington, DC 20585-0121. Phone: (202) 586-7463. Email: stephen.witkowski1@ee.doe.gov.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of General Counsel, GC-71, 1000 Independence Avenue SW., Washington, DC 20585-0121. Phone: (202) 586-7796, email: elizabeth.kohl@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

- I. Introduction and Legal Authority
- II. Test Procedures
- III. Energy Conservation Standards

I. Introduction and Legal Authority

Title III, Part B of the Energy Policy and Conservation Act (EPCA) of 1975, Public Law 94-163, (42 U.S.C. 6291-6309), as amended, established an energy conservation program for consumer products other than automobiles.¹

The Energy Policy Act of 2005 (EPACT 2005), Public Law 109-58, amended EPCA to establish energy conservation standards for dehumidifiers² manufactured as of October 1, 2007. (Section 135(c)(4)) EPACT 2005 also required that DOE issue a final rule by October 1, 2009, to determine whether these standards should be amended. (*Id.*) Compliance with any amended standards would be required for dehumidifiers manufactured as of October 1, 2012. (*Id.*) In the event that DOE did not publish a final rule, EPACT 2005 specified a new set of amended standards with a compliance date of October 1, 2012. (*Id.*)

DOE issued an Advance Notice of Proposed Rulemaking (ANOPR) to consider energy conservation standards for dehumidifiers and other products. 72 FR 64432 (Nov. 15, 2007). The Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110-140 subsequently amended EPCA to prescribe new energy conservation

¹ Upon codification in the U.S. Code, Part B was re-designated Part A for editorial reasons.

² Dehumidifiers are defined as self-contained, electrically operated, and mechanically encased assemblies consisting of: (1) A refrigerated surface (evaporator) that condenses moisture from the atmosphere; (2) a refrigerating system, including an electric motor; (3) an air-circulating fan; and (4) a means for collecting or disposing of the condensate. (42 U.S.C. 6291(34))

standards for dehumidifiers manufactured on or after October 1, 2012. DOE codified the EISA 2007 standards at 10 CFR 430.32(v)(2). 74 FR 12058 (Mar. 23, 2009).

EPCA also requires that, not later than 6 years after the issuance of a final rule establishing or amending a standard, DOE publish a notice of proposed rulemaking (NPR) proposing new standards or a notice of determination that the existing standards do not need to be amended. (42 U.S.C. 6295(m)(1))

II. Test Procedures

EPCA specifies that the test procedure for dehumidifiers must be based on the U.S. Environmental Protection Agency (EPA)'s test criteria used under the ENERGY STAR Program in effect on August 8, 2005, unless DOE revises the test procedures. (42 U.S.C. 6293(b)(13)) Those ENERGY STAR test criteria require that American National Standards Institute (ANSI)/Association of Home Appliance Manufacturers (AHAM) Standard DH-1 be used to measure capacity in pints of moisture removed per day, while Canada's CAN/Canadian Standards Association (CSA)-C749-94 is used to calculate the energy factor (EF) in terms of liters of moisture removed per kilowatt-hour (kWh). DOE codified the test procedure requirements from EPCA for dehumidifiers at 10 CFR part 430 subpart B, appendix X. 71 FR 71340 (Dec. 8, 2006).

EPCA requires that DOE amend the test procedures for certain residential products, including dehumidifiers, to incorporate measures of standby mode and off mode energy use, if technically feasible. DOE published a NPR in which it proposed to incorporate by reference in the test procedures for dehumidifiers and other products an international test method for measuring standby mode and off mode power consumption, International Electrotechnical Commission (IEC) Standard 62301. 75 FR 75290 (Dec. 2, 2010). DOE subsequently published a Supplemental Notice of Proposed Rulemaking (SNOPR) to propose referencing the updated version of IEC Standard 62301. 76 FR 58346 (Sept. 20, 2011). In a second SNOPR, DOE proposed in relevant part to measure both capacity and EF for dehumidifiers according to the current version of AHAM Standard DH-1. 77 FR 31444 (May 25, 2012).

III. Energy Conservation Standards

During this rulemaking, DOE will determine whether to further amend the energy conservation standards for residential dehumidifiers. (42 U.S.C. 6295(cc)). EPCA requires that any new

or amended energy conservation standard be designed to achieve the maximum improvement in energy or water efficiency that is technologically feasible and economically justified. To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following:

- (1) The economic impact of the standard on the manufacturers and consumers of the affected products;
- (2) The savings in operating costs throughout the estimated average life of the product compared to any increases in the initial cost, or maintenance expense;
- (3) The total projected amount of energy and water (if applicable) savings likely to result directly from the imposition of the standard;
- (4) Any lessening of the utility or the performance of the products likely to result from the imposition of the standard;
- (5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;
- (6) The need for national energy and water conservation; and
- (7) Other factors the Secretary considers relevant.

(42 U.S.C. 6295 (o)(2)(B)(i))

To begin the required rulemaking process, DOE has prepared a framework document to explain the issues, analyses, and processes that it is considering for the development of amended energy conservation standards for residential dehumidifiers. The framework document is available at http://www1.eere.energy.gov/buildings/appliance_standards/residential/dehumidifiers.html.

Additionally, DOE will hold a public meeting to focus on the analyses and issues described in the framework document. DOE encourages anyone who wishes to participate in the public meeting to view the framework document and to be prepared to discuss its contents. Public meeting participants need not limit their comments to the topics identified in the framework document; DOE is also interested in receiving views on other relevant issues that participants believe would affect energy conservation standards for these products. DOE welcomes all interested parties, regardless of whether they participate in the public meeting, to submit in writing comments and information on matters addressed in the framework document and on other matters relevant to consideration of standards for residential dehumidifiers.

DOE will conduct the public meeting in an informal conference style. A court reporter will record the minutes of the

meeting. The discussion will not include proprietary information, costs or prices, market shares, or other commercial matters regulated by U.S. antitrust laws.

After the public meeting and the expiration of the period for submitting written statements, DOE will begin collecting data, conducting the analyses as discussed at the public meeting, and reviewing public comments.

Anyone who wishes to participate in the public meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information about the rulemaking process for residential dehumidifiers should contact Ms. Brenda Edwards at (202) 586-2945

Issued in Washington, DC, on July 31, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary of Energy, Energy Efficiency and Renewable Energy.

[FR Doc. 2012-20231 Filed 8-16-12; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 91, and 145

[Docket No. FAA-2006-26408; Notice No. 12-03]

RIN 2120-AJ61

Repair Stations; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); Extension of comment period.

SUMMARY: This action extends the comment period for an NPRM that was published on May 21, 2012. In that document, the FAA proposed to update and revise the regulations for repair stations. This extension is a result of formal requests from repair stations and industry associations to extend the comment period to the proposal. This extension is necessary to afford all interested parties an opportunity to present their views on the proposed rulemaking.

DATES: Comments must be received on or before November 19, 2012.

ADDRESSES: You may send comments identified by Docket No. FAA-2006-26408 using any of the following methods:

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

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

- **Hand Delivery or Courier:** Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** Fax comments to Docket Operations at 202–493–2251.

Privacy: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at <http://DocketsInfo.dot.gov>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

James M. Crotty, ARM–205, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–9456; email James.M.Crotty@faa.gov.

SUPPLEMENTARY INFORMATION: See the “Additional Information” section in the NPRM (77 FR 30054) for further information on how to comment on the proposals in the NPRM and how the FAA will handle comments received. The “Additional Information” section also contains related information about the docket, privacy, and the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

Background

On May 21, 2012, the FAA issued Notice No. 12–03, entitled “Repair Stations” (77 FR 30054). Comments to that document were to be received on or before August 20, 2012.

By letter dated August 3, 2012, nine associations representing a large cross-section of the aviation industry jointly requested that the FAA extend the comment period for 90 days (Aeronautical Repair Station Association, Aerospace Industries Association, Aircraft Electronics Association, Aircraft Owners and Pilots Association, Airlines for America, Helicopter Association International, National Air Carrier Association, National Air Transportation Association, and Regional Airline Association). The petitioners stated that good cause and need for an extended comment period arises from the scope and extent of the proposed changes, coupled with the effects it will have between and among individual companies represented by the petitioners. Further, the petitioners noted that many repair stations are small businesses which do not have departments or personnel dedicated to reviewing regulatory changes. As such, they may not be aware of the proposals, and the petitioners need more time to reach these small businesses and gather their input. Finally, the petitioners stated that more time is needed to consolidate its members' comments and coordinate these comments among the group.

The FAA agrees with the petitioners' request for an extension of the comment period. We recognize the NPRM's contents are significant and complex. Further, we understand that it is the intention of the petitioners to continue to canvass their members for comments, and to coordinate and consolidate the additional comments.

Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

Extension of Comment Period

In accordance with § 11.47(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the joint petition made by the nine associations for extension of the comment period to Notice No. 12–03. These petitioners have shown a substantive interest in the proposed rule and good cause for the extension. The FAA has determined that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Notice No. 12–03 is extended to November 19, 2012.

Issued in Washington, DC, on August 13, 2012.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

[FR Doc. 2012–20277 Filed 8–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket ID–OSHA–2007–0066]

RIN 1218–AC61

Cranes and Derricks in Construction: Demolition and Underground Construction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: On August 9, 2010, OSHA issued a final standard updating the requirements for cranes and derricks used in construction work. For most construction work, the final rule replaced a prior cranes and derricks standard. However, the prior standard continues to apply to demolition and underground construction work. Through this proposed rule, OSHA is proposing to apply the updated requirements to that work. With this proposed rule, OSHA also is proposing to correct inadvertent errors made to the demolition and underground construction standards when it issued the final rule for cranes and derricks in construction.

DATES: Submit comments to this proposed rule, including comments to the information-collection (paperwork) determination (described under the section titled AGENCY DETERMINATIONS), hearing requests, and other information by September 17, 2012. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES: Submit comments, hearing requests, and other material, identified by Docket No. OSHA–2007–0066, by any of the following methods:

Electronically: Submit comments and attachments, as well as hearing requests and other information, electronically at <http://www.regulations.gov>, which is the Federal e-Rulemaking Portal. Follow the instructions online for submitting comments. Please note that this docket may include several different **Federal Register** notices involving active rulemakings, so selecting the correct notice or its ID number when submitting

comments for this rulemaking is extremely important. After accessing the docket (OSHA–2007–0066), look for the name of this rulemaking (Cranes and Derricks in Construction: Demolition and Underground Construction) in the column labeled “Title.”

Facsimile: OSHA allows facsimile transmission of comments that are 10 pages or fewer in length (including attachments). Fax these documents to the OSHA Docket Office at (202) 693–1648. OSHA does not require hard copies of these documents. Instead of transmitting facsimile copies of attachments that supplement these documents (e.g., studies, journal articles), commenters must submit these attachments to the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210. These attachments must clearly identify the sender’s name, the date, subject, the title of the rulemaking (Cranes and Derricks in Construction: Demolition and Underground Construction) and the docket number (OSHA–2007–0066) so that the Docket Office can attach them to the appropriate document.

Regular mail, express delivery, hand (courier) delivery, and messenger service: Submit comments and any additional material to the OSHA Docket Office, RIN No. 1218–AC61, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; telephone: (202) 693–2350. (OSHA’s TTY number is (877) 889–5627). Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service. The Docket Office will accept deliveries (express delivery, hand delivery, messenger service) during the Docket Office’s normal business hours, 8:15 a.m. to 4:45 p.m., E.T.

Instructions: All submissions must include the Agency’s name, the title of the rulemaking (Cranes and Derricks in Construction: Demolition and Underground Construction), and the docket number (i.e., OSHA Docket No. OSHA–2007–0066). OSHA will place comments and other material, including any personal information, in the public docket without revision, and the comments and other material will be available online at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or

others) such as Social Security numbers, birth dates, and medical data.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov> or to the OSHA Docket Office at the above address. The electronic docket for this proposed rule established at <http://www.regulations.gov> lists most of the documents in the docket. However, some information (e.g., copyrighted material) is not available publicly to read or download through this Web site. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries: Mr. Frank Meilinger, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999.

Technical inquiries: Mr. Garvin Branch, Directorate of Construction, Room N–3468, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2020; fax: (202) 693–1689.

Copies of this Federal Register notice and news releases: Electronic copies of these documents are available at OSHA’s Web page at <http://www.osha.gov>.

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I. Request for Comment

OSHA requests comment on all issues related to the proposed rule, including economic, paperwork, or other regulatory impacts of this rule on the regulated community. If OSHA receives no significant adverse comment to either this proposal or the companion

direct final rule, OSHA will publish a **Federal Register** document confirming the effective date of the direct final rule and withdrawing this companion proposed rule. Such confirmation may include minor stylistic or technical changes to the document. For the purpose of judicial review, OSHA considers the date of confirmation of the effective date of the direct final rule as the date of promulgation.

II. Direct Final Rulemaking

In direct final rulemaking, an agency publishes a direct final rule in the **Federal Register** with a statement that the rule will become effective unless the agency receives significant adverse comment within a specified period. The agency may publish an identical proposed rule at the same time. If the agency receives no significant adverse comment in response to the direct final rule, the agency typically confirms the effective date of a direct final rule through a separate **Federal Register** notice. If the agency receives a significant adverse comment, the agency withdraws the direct final rule and treats such comment as a response to the proposed rule. An agency uses direct final rulemaking when it anticipates that a rule will not be controversial.

OSHA is publishing a companion direct final rule along with this proposed rule in the “Final Rules” section of today’s **Federal Register**. For purposes of this proposed rule and the companion direct final rule, a significant adverse comment is one that explains why the amendments to OSHA’s underground construction and demolition standards would be inappropriate. In determining whether a comment necessitates withdrawal of the direct final rule, OSHA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. OSHA will not consider a comment recommending an additional amendment to be a significant adverse comment unless the comment states why the direct final rule would be ineffective without the addition.

The comment period for the direct final rule runs concurrently with that of this proposed rule. OSHA will treat comments received on the companion direct final rule as comments regarding the proposed rule. OSHA also will consider significant adverse comment submitted to this proposed rule as comment to the companion direct final rule. If OSHA receives a significant adverse comment on either the direct final rule or this proposed rule, it will publish a timely withdrawal of the

companion direct final rule and proceed with this proposed rule. In the event OSHA withdraws the direct final rule because of significant adverse comment, OSHA will consider all timely comments received in response to the direct final rule when it continues with the proposed rule. After carefully considering all comments to the direct final rule and the proposal, OSHA will decide whether to publish a new final rule.

OSHA determined that the subject of this rulemaking is suitable for direct final rulemaking. Under the final rule for cranes and derricks in construction, most construction work involving cranes and derricks falls under new subpart CC of 29 CFR 1926, but underground construction and demolition remain covered under the former rule (*i.e.*, § 1926.550). These proposed amendments will result in the new subpart CC covering all construction operations, thereby improving worker safety because the new rule provides better protection to workers than the former rule. Moreover, these proposed amendments will facilitate employer compliance by having all construction operations involving cranes and derricks subject to a single rule rather than by having a few operations subject to a different rule. In addition, this proposed (and the direct final) rule corrects inadvertent errors made to the standards for underground construction and demolition when OSHA issued the final cranes rule. Therefore, OSHA does not expect objections from the public to this rulemaking action. Accordingly, the Agency believes the regulated community will welcome this effort to harmonize the requirements regulating crane and derrick operations in underground construction and demolition, and to remove errors that hinder interpretation and proper application of existing standards.

III. Discussion of Amendments

A. Background

OSHA designed the final rule for cranes and derricks in construction, codified at 29 CFR part 1926, subpart CC, to replace the earlier rule (§ 1926.550) for all construction work.¹ In proposing the new cranes and derricks rule, OSHA explained that the rule's purpose was "to protect employees from the hazards associated with hoisting equipment when used to perform construction activities" (73 FR 59714). Because OSHA developed the

new rule to supplant the former rule entirely, OSHA proposed to remove and reserve § 1926.550 (73 FR 59915). When other OSHA construction standards referred to § 1926.550 directly, or indirectly, as part of subpart N, OSHA proposed to amend those provisions to refer instead to the new requirements in subpart CC (73 FR 59914–15).

In the proposed rule for cranes and derricks in construction, OSHA inadvertently did not propose to amend three provisions that referred to subpart N and encompassed the requirements of § 1926.550. These provisions included two provisions applicable to demolition work (§ 1926.856(c) and § 1926.858(b)), and one provision applicable to underground construction work (§ 1926.800(t)). When it issued the final rule, OSHA noted concerns about potentially inadequate notice to the public regarding any effort to amend these provisions in the final rule; consequently, OSHA decided not to amend these provisions in the final rule. OSHA instead stated that it would revisit the issue later (75 FR 47920–21).

Having removed the requirements of § 1926.550 in the final rule, OSHA had to reestablish the substance of the demolition and underground construction provisions in a new subpart DD in the final rule, redesignate § 1926.550 as § 1926.1501 of subpart DD, and amend the demolition and underground construction provisions that previously referred to subpart N to refer instead to the new subpart DD. OSHA provided in § 1926.1500 of subpart DD that "[t]his subpart applies in lieu of § 1926 subpart CC." However, in making these revisions, OSHA inadvertently made changes to the demolition and underground construction provisions that modified the meaning of these provisions. In addition, the Code of Federal Regulations eliminated all of the subparagraphs of § 1926.800(t), except for the introductory paragraph, because of a technical error in the draft regulatory language.

This proposed rule, therefore, will accomplish two goals. First, it will bring all crane and derrick use in construction work under new subpart CC. Second, it will correct the errors in the final rule that substantively altered the demolition and underground construction provisions, and replace subparagraphs § 1926.800(t)(1) through (4). Below, OSHA describes the amendments to the demolition and underground construction standards that OSHA made in the final rule for cranes and derricks in construction (including inadvertent errors), as well as the revisions and

corrections to these standards that OSHA proposes.

B. Demolition Work

Before OSHA issued the final rule for cranes and derricks in construction, § 1926.856(c) stated, "Mechanical equipment used shall meet the requirements specified in subparts N and O of this part," and § 1926.858(b) read, "Cranes, derricks, and other hoisting equipment used shall meet the requirements specified in subpart N of this part." In the final rule for cranes and derricks in construction, OSHA established a new subpart DD, redesignated the prior cranes and derricks rule (§ 1926.550) as § 1926.1501 of subpart DD, and amended § 1926.856(c) to require compliance with the new subpart DD, in addition to the remaining requirements of subparts N and O. OSHA also amended § 1926.858(b) to require compliance with new subpart DD instead of subpart N.

It was OSHA's expressed purpose not to make substantive revisions to the requirements of these two sections in the final rule.² Nevertheless, OSHA made an inadvertent substantive change to § 1926.858(b).³ That section originally incorporated all requirements of subpart N for "cranes, derricks, and other hoisting equipment," not just the requirements of subpart N's cranes and derricks standard at § 1926.550. However, the final rule did not reference other requirements of subpart N that pertain to demolition work, which include the requirements of § 1926.552 (Material hoists, personnel hoists, and elevators) and § 1926.554 (Overhead hoists). As a result, the amendment had the effect of deleting the requirement for employers engaged in demolition work to comply with §§ 1926.552 and 1926.554. Therefore, to cover all construction work under subpart CC, and to correct these errors, OSHA is proposing to amend §§ 1926.856(c) and 1926.858(b) by replacing the requirements to comply with subpart DD with requirements to comply with subpart CC, and is proposing to amend § 1926.858(b) by

² OSHA explained in the preamble to the final rule that the "redesignation of § 1926.550 and the replacement of references [to subpart N] do not alter any of the substantive requirements of §§ 1926.856(c) and 1926.858(b)" (75 FR 47921).

³ OSHA also inadvertently listed the heading of § 1926.858 as "Removal of walls, floors and materials with equipment" (the same heading as § 1926.856), instead of "Removal of steel construction," but this erroneous heading did not appear in the subsequent edition of the Code of Federal Regulations (CFR). Therefore, OSHA finds no need to address this error in this rulemaking.

¹ OSHA published the final rule at 75 FR 47906 (Aug. 9, 2010).

reinstating the requirement to comply with subpart N as well.

C. Underground Construction

Section 1926.800(t) contains requirements for hoisting that are unique to underground construction. Before OSHA issued the final rule for cranes and derricks in construction, the previous version of § 1926.800(t) contained an introductory paragraph that cross-referenced other OSHA standards that apply to hoisting in underground construction; these cross-references consisted of the requirements of the prior cranes and derricks rule at § 1926.550, including most of § 1926.550(g) (the provision of the prior rule that applied to hoisting personnel), and requirements for material hoists, personnel hoists, and elevators at § 1926.552(a) through (d). Previous § 1926.800(t) included one substantive modification to the requirements of prior § 1926.550(g)(2): employers could use cranes to hoist employees for routine access to underground worksites via a shaft without showing that conventional means would be more hazardous, or not possible, for this purpose due to structural design or worksite conditions.⁴ When it issued the underground construction rule, OSHA included this modification because hoisting personnel for routine access to the underground worksites via a shaft occurs under more controlled, and less hazardous, conditions than hoisting personnel in general (54 FR 23824, 23845). Previous § 1926.800(t)(1) through (4) contained additional requirements for hoisting unique to underground construction. Language at the beginning of the introductory paragraph of § 1926.800(t), “Except as modified by this paragraph (t),” clarified that the requirements and exceptions in § 1926.800(t)(1) through (4) take precedence over the cross-referenced requirements, including the former cranes standard under § 1926.550.

In the final cranes rule, OSHA redesignated the prior cranes and derricks rule as § 1926.1501 of subpart DD. It was OSHA’s expressed purpose to preserve the existing crane requirements for underground construction by changing references in the introductory paragraph of § 1926.800(t) from § 1926.550 and § 1926.500(g)(2) to § 1926.1501 and § 1926.1501(g)(2), respectively. OSHA clarified this purpose in the preamble to the final rule by stating that the revisions to

§ 1926.800(t) “do not alter any of the substantive requirements of § 1926.800(t)” (75 FR 47920). However, OSHA inadvertently changed § 1926.800(t) by amending the introductory paragraph to require employers engaged in underground construction to comply only with new § 1926.1501(g) (which duplicated § 1926.550(g)), instead of preserving the former routine-access exemption by requiring compliance with § 1926.1501 in its entirety, and modifying the requirements of § 1926.1501(g)(2) (which duplicated former § 1926.550(g)(2)).⁵ Additionally, OSHA inadvertently moved the language “Except as modified by paragraph (t)” to the beginning of the second sentence of the introductory paragraph so that it no longer applied to the cross-referenced § 1926.1501 requirements, but instead only applied to the cross-referenced requirements in § 1926.552(a) through (d). Finally, although OSHA did not plan to alter any of the (then remaining) requirements and exemptions of § 1926.800(t)(1) through (4), but only to amend the introductory paragraph, a technical error in the instructions to the **Federal Register** resulted in the deletion of subparagraphs § 1926.800(t)(1) through (4). The deletion was not mentioned in the preamble to the final cranes rule.

As amended by the final cranes rule, § 1926.800(t) presents four problems. First, the prior version of § 1926.800(t) incorporated all of § 1926.550, not just § 1926.550(g). However, the amended version of § 1926.800(t) refers only to § 1926.1501(g), the successor to § 1926.550(g). Therefore, as now written, § 1926.800(t) does not explicitly require employers to comply with either the final cranes rule or the prior rule at § 1926.550, except for § 1926.1501(g), the prior rule’s provision on hoisting personnel. Second, the exception from § 1926.550(g)(2), specified in the former version of § 1926.800(t), provided that employers could use cranes to hoist personnel for routine access to underground worksites via a shaft without showing that other means of access are more hazardous or impossible. OSHA did not include this exception in the new version of § 1926.800(t). This inadvertent error places an additional and unnecessary burden on employers that use cranes for this purpose. Third, moving the text “Except as modified by paragraph (t)” to

the beginning of the second sentence of the introductory paragraph of § 1926.800(t) results in ambiguity as to the relationship between incorporated crane requirements and the provisions in § 1926.800(t)(1) through (4). Finally, the inadvertent elimination of § 1926.800(t)(1) through (4) from the Code of Federal Regulations resulted in eliminating requirements that OSHA adopted in a 1989 rulemaking (54 FR 23843) to ensure that employees engaged in underground construction receive adequate protection from hazards unique to hoisting in this setting.

In this proposed rule, OSHA is proposing to amend § 1926.800(t) to extend subpart CC to underground construction, and to resolve the technical errors set forth in this section. OSHA is proposing to amend the introductory paragraph of § 1926.800(t) to restore the provision allowing employers to use cranes to hoist personnel for routine access to the underground worksites via a shaft without the need to show that conventional means of access are more hazardous or impossible for this purpose. This amendment excepts routine access of employees to an underground worksite via a shaft from the requirements of § 1926.1431(a). The requirements of § 1926.1431(a) are virtually identical to the requirements of § 1926.550(g)(2). In addition, OSHA is proposing to amend § 1926.800(t) by restoring the clause “Except as modified by this paragraph (t)” to the beginning of the introductory paragraph, and restoring § 1926.800(t)(1) through (4). OSHA is also proposing to revise the language in the introductory paragraph for clarity, and is proposing to correct three minor grammatical errors that appeared in the text of paragraphs § 1926.800(t)(3)(vi), (t)(4)(iii), and (t)(4)(iv), as previously published in the Code of Federal Regulations.

D. Rationale for Extending Subpart CC to Demolition and Underground Construction

The revisions made by this proposed rule will enable OSHA to cover all cranes and derricks used in construction under subpart CC. These revisions implement the original purpose of the rule and will benefit both employees and employers. These revisions would ensure that the significant benefits of subpart CC, which include saving 22 lives per year and preventing 175 non-fatal injuries per year compared to prior § 1926.550 (75 FR 48079), extend to demolition and underground construction. Accordingly, applying subpart CC to demolition and

⁴ Prior § 1926.550(g)(2) required employers to show, before using cranes to hoist personnel to a worksite, that conventional means would be more hazardous than cranes, or not possible, due to structural design or worksite conditions.

⁵ OSHA stated in the final rule that it was including the reference to § 1926.1501(g) to avoid any potential notice problem that may arise if OSHA substituted a reference to subpart CC in place of the prior reference to § 1926.550(g) (75 FR 47920).

underground construction will ensure that construction workers in those sectors receive the same safety protections from new subpart CC as other construction workers.

The revisions also will benefit construction contractors that engage in underground construction or demolition work, in addition to other types of construction work, because these contractors will now be subject to a single standard rather than having some of their activities covered under subpart CC and other work covered by subpart DD. This action will avoid the confusion that would result if new subpart CC covers part of a project and revised § 1926.800(t) covers another part of the project. For example, in a cut-and-cover tunneling project, the underground construction standard applies only after covering the excavation in such a manner as to establish conditions characteristic of underground construction. 29 CFR 1926.800(a). Therefore, under the current requirements, subpart CC would apply to the work while the excavation is open, but after covering the excavation, subpart DD would apply, thereby resulting in the same crane or derrick being subject to different standards during different phases of the project. Finally, this action will facilitate employer compliance because demolition and underground construction contractors will no longer be subject to the outdated requirements in prior § 1926.550, which relied heavily on pre-1970 consensus standards.

IV. Agency Determinations

A. Final Economic Analysis and Final Regulatory Flexibility Analysis

When it issued the final cranes rule, OSHA prepared a final economic analysis (FEA) as required by the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651 *et seq.*) and Executive Order 12866 (58 FR 51735). OSHA also published a Final Regulatory Flexibility Analysis (FRFA) as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). OSHA's approach to estimating costs and economic impacts in these analyses began by estimating, for all construction sectors, the total number of cranes and whether they were owned and rented; owned without rental; or leased. As a result, both analyses covered all cranes engaged in construction activities, including cranes engaged in underground construction and cranes engaged in construction work involving demolition. The FEA for the final cranes standard, which included all cranes,

crane operations, and industry sectors subject to this proposed rule, found that the requirements of the rule were technologically and economically feasible.

Because the FEA drew these conclusions from calculations encompassing all of the underground construction and demolition crane operations covered by this proposed rule, the conclusions in the earlier FEA are valid for this proposed rule. The reference to the FEA for the final cranes rule, therefore, establishes that this proposed rule is technologically and economically feasible, addresses significant risks, and reduces those risks significantly. The FEA, which OMB reviewed, meets the requirements of Executive Orders 12866 and Executive Order 13563 with respect to the operations covered by this proposed rule; OSHA included these operations in the FEA for the final cranes standard. Therefore, OSHA believes that this proposed rule also complies with Executive Orders 12866 and Executive Order 13563.

To determine if this proposed rule has annual costs of greater than \$100 million, or would have a significant economic impact on a substantial number of small firms, OSHA examined the sectors most affected by this proposed rule. This proposed rule affects two construction sectors: NAICS 237990 (Other Heavy and Civil Engineering Construction), which includes all establishments engaged in underground construction, and NAICS 238910 (Site Preparation Contractors), which includes all establishments engaged in demolition. This analysis, therefore, reviews the results for these two sectors reported in the final crane standard's FEA, which the **Federal Register** published on August 9, 2010.

That FEA simply considered all cranes and crane operations in these sectors, and did not analyze separately those operations involving underground construction or demolitions because OSHA planned to apply subpart CC to these operations. OSHA will report here the results for these entire sectors, which will inevitably involve greater costs and impacts than for the activities addressed in this proposed rule because both sectors have many cranes and crane jobs that do not involve underground construction or demolition activities. Table B–9 of the FEA showed that NAICS 237990, which includes all crane operations involved in underground construction operations, had annualized compliance costs of \$1,903,569 for firms that own and rent cranes, \$205,532 for firms that own but do not rent cranes, and \$1,151,759 for

firms that lease cranes, for total annualized costs of \$3,260,860 (75 FR 48102–48105). Table B–9 also showed that NAICS 238910, which contains all crane operations involving demolitions, had annualized compliance costs of \$1,232,974 for firms that own and rent cranes, \$292,601 for firms that own but do not rent cranes, and \$1,626,463 for firms that lease cranes, for total annualized compliance costs of \$3,152,038. The total annualized compliance costs for both sectors are \$6,412,898. Because these two NAICS sectors include operations not involved in underground construction or demolition, the total estimated annualized compliance costs of \$6,412,898 for these two sectors will be greater than the actual costs of this proposed rule. Based on these costs, OSHA concludes that this proposed rule is not a significant rule under either E.O. 12866 or the Unfunded Mandates Act.

With respect to technological feasibility, the earlier FEA, which included consideration of both underground construction and demolition operations, noted:

In accordance with the OSH Act, OSHA is required to demonstrate that occupational safety and health standards promulgated by the Agency are technologically feasible. Accordingly, OSHA reviewed the requirements that would be imposed by the final regulation, and assessed their technological feasibility. As a result of this review, OSHA has determined that compliance with the requirements of the final standard is technologically feasible for all affected industries. The standard would require employers to perform crane inspections, utilize qualified or certified crane operators, address ground conditions, maintain safe distances from power lines using the encroachment prevention precautions, and to fulfill other obligations under the standard. Compliance with all of these requirements can be achieved with readily and widely available technologies. Some businesses in the affected industries already implement the requirements of the standard to varying degrees (some states have requirements), as noted during the SBREFA Panel. OSHA believes that there are no technological constraints in complying with any of the proposed requirements, and received no comments that suggested that these standards were technologically infeasible.

(75 FR 48095).

In Table B–12 of the FEA for the final cranes rule, OSHA examined the costs as a percentage of revenues and as a percentage of profits in these two sectors. This table shows that, for both sectors, the greatest potential impacts were on establishments that own and rent cranes with operators. This table showed that for NAICS 237990, which

includes all underground construction operations, costs were 0.18 percent (less than 1 percent) of revenues and 3.54 percent of profits. This table also showed that for NAICS 238910, including all demolition operations involving cranes, costs were 0.18 percent of revenues and 4.05 percent of profits. (Table B–12 and the FEA as a whole provide the full calculations and derivations.) The FEA from the final cranes standard stated:

The Agency concludes that the final standard is economically feasible for the affected industries. As described above, a standard is economically feasible if there is a reasonable likelihood that the estimated costs of compliance “will not threaten the existence or competitive structure of an industry, even if it does portend disaster for some marginal firms.” *United Steelworkers of America v. Marshall*, 647 F.2d 1189, 1272 (D.C. Cir. 1980). The potential impacts on employer costs associated with achieving compliance with the final standard fall well within the bounds of economic feasibility in each industry sector. Costs of 0.2 percent of revenues and 4 percent of profits will not threaten the existence of the construction industry, affected general industry sectors, or the use of cranes in affected industry sectors. OSHA does not expect compliance with the requirements of the final standard to threaten the viability of employers or the competitive structure of any of the affected industry sectors. When viewed in the larger context of the construction sector, an increase in costs of \$148.2 million a year is effectively negligible, and will have no noticeable effect on the demand for construction services. Even when viewed as an increase in the costs of using cranes, an increase in the cost of rentals services of 0.2 percent will not cause the construction industry to forego the use of cranes and, thus, put crane leasing firms out of business.

(75 FR 48112). Because the earlier FEA drew this conclusion with respect to costs that included the costs of this proposed rule, as well as other costs that made the impacts greater than those of this proposed rule, OSHA concludes that the FEA for the cranes and derricks final rule demonstrates that this proposed rule is economically feasible.

Tables B–14 and B–15 of the FEA for the cranes and derricks final rule examined the costs as a percentage of revenues and as a percentage of profits in these two sectors for small firms as defined by SBA, and very small entities with less than 20 employees, respectively. Because so many firms owning cranes are small, there is no appreciable difference between the impacts on small and very small firms versus the impacts for all firms already discussed. Comparison of the two tables shows that, for NAICS 237990, the impacts for very small firms were equal to or greater than those for small firms.

Table B–15 shows that, for NAICS 237990, costs were 0.18 percent of revenues and 3.54 percent of profits. This table also shows that, for NAICS 238910, including all demolition operations involving cranes, there were no very small entities that owned and rented cranes, with the result that the greatest impacts are for small entities that own and rent crane where costs are 0.18 percent of revenues and 4.05 percent of profits.

In its regulatory flexibility analysis, OSHA generally defines a significant economic impact on small entities as one with costs in excess of one percent of revenues or five percent of profits. The possible costs of this proposed rule clearly are well below these thresholds. OSHA, therefore, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act of 1995

When OSHA issued the final rule on August 9, 2010, it submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) titled *Cranes and Derricks in Construction (29 CFR Part 1926, Subpart CC)*. This ICR⁶ covered all establishments in the construction industry, including all of the establishments in NAICS 237990 and NAICS 238910. On November 1, 2010, OMB approved the ICR under OMB control number 1218–0261, with an expiration date of November 30, 2013. Subsequently, in December 2010, OSHA discontinued the *Cranes and Derricks Standard for Construction (29 CFR 1926.550)* ICR (OMB Control Number 1218–0113) because the new ICR superseded the existing ICR. In addition, OSHA retitled the new ICR to *Cranes and Derricks in Construction (29 CFR Part 1926, Subpart CC and Subpart DD)*.⁷

This proposed rule requires no additional collection of information.⁸

⁶ The ICR is part of Exhibit 0425 in the docket for the final rule on cranes and derricks in construction (OSHA–2007–0066). It is available at www.regulations.gov and at www.reginfo.gov (OMB Control Number 1218–0261).

⁷ The request and OMB approval for discontinuing the previous *Cranes and Derricks in Construction* ICR (OMB Control Number 1218–0113) and the retitling of the ICR are available at www.reginfo.gov.

⁸ Although the final rule for cranes and derricks in construction did not require employers covered by subpart DD to meet the information-exchange requirements of subpart CC, OSHA did not subtract these employers from its analysis of the burden and costs for these requirements in the paperwork analysis for subpart CC. Therefore, this approach inflated the burden and costs estimates of the ICR approved by OMB for subpart CC; however, the burden and costs estimates are accurate now that

OMB’s approval of OSHA’s ICR under Control Number 1218–0261 already covers all collections of information required by this proposed rule, and OSHA does not believe it is necessary to submit a new ICR to OMB seeking to collect additional information under this proposed rule.

Interested parties who comment on OSHA’s determination that this proposal contains no additional paperwork requirements must send their written comments to the Office of Management and Budget, Attn: OMB Desk Officer for OSHA, Room 10235, 726 Jackson Place, NW., Washington, DC 20503. OSHA also encourages commenters to submit their comments on this paperwork determination to it, along with their other comments on the proposed rule.

OSHA notes that a Federal agency cannot conduct or sponsor a collection of information unless OMB approves it under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the agency displays a currently valid OMB control number. The public need not respond to a collection of information requirement unless the agency displays a currently valid OMB control number, and, notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information requirement if the requirement does not display a currently valid OMB control number.

C. Federalism

OSHA reviewed this proposed rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that Federal agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. Executive Order 13132 provides for preemption of state law only with the expressed consent of Congress. Federal agencies must limit any such preemption to the extent possible.

Under Section 18 of the OSH Act, Congress expressly provides that states may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards. States that obtain Federal approval for such a plan are referred to as “State Plan States.” Occupational safety and health

OSHA is applying subpart CC to underground construction and demolition work.

standards developed by State Plan States must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. 29 U.S.C. 667. Subject to these requirements, State Plan States are free to develop and enforce under state law their own requirements for safety and health standards.

OSHA previously concluded from its analysis that promulgation of subpart CC complies with Executive Order 13132. 75 FR 48128–29. That analysis applies to the extension of subpart CC to establishments engaged in demolition work and underground construction; therefore, this proposed rule complies with Executive Order 13132. In states without an OSHA-approved State Plan, any standard developed from this proposed rule would limit state policy options in the same manner as every standard promulgated by OSHA. In states with OSHA-approved State Plans, this rulemaking does not significantly limit state policy options.

D. State Plan States

When Federal OSHA promulgates a new standard or more stringent amendment to an existing standard, State Plan States must amend their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary, *e.g.*, because an existing state standard covering this area is “at least as effective” as the new Federal standard or amendment. 29 CFR 1953.5(a). The state standard must be at least as effective as the final Federal rule. State Plan States must adopt the Federal standard or complete their own standard within six months of the promulgation date of the final Federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than an existing standard, State Plan States are not required to amend their standards, although OSHA may encourage them to do so. The 27 states and U.S. territories with OSHA-approved occupational safety and health plans are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming; Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to state and local government employees only.

The amendments in this proposed rule will result in more stringent requirements for cranes and derricks

used in demolition and underground construction work. Therefore, when OSHA promulgates a new final rule, states and territories with approved State Plans must adopt comparable amendments to their standards for cranes and derricks used in demolition and underground construction within six months of OSHA’s promulgation of the final rule (*i.e.*, the date OSHA publishes confirmation of the effective date) unless they demonstrate that such a change is not necessary because their existing standards are already the same, or at least as effective, as OSHA’s new final rule.

E. Unfunded Mandates Reform Act

When OSHA issued the final rule for cranes and derricks in construction, it reviewed the rule according to the Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.* (58 FR 58093)), and Executive Order 12875 (75 FR 48130). OSHA concluded that the final rule did not meet the definition of a “Federal intergovernmental mandate” under the UMRA because OSHA standards do not apply to state or local governments except in states that have voluntarily adopted State Plans. OSHA further noted that the rule imposed costs of over \$100 million per year on the private sector and, therefore, required review under the UMRA for those costs, but that its final economic analysis met that requirement.

As discussed above in Section IV.A (Final Economic Analysis and Final Regulatory Flexibility Analysis) of this preamble, this proposed rule does not impose any costs on private-sector employers beyond those costs already taken into account in the final rule for cranes and derricks in construction. Because OSHA reviewed the total costs of this final rule under the UMRA, no further review of those costs is necessary. Therefore, for the purposes of the UMRA, OSHA certifies that this proposed rule does not mandate that state, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than \$100 million in any year.

F. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this proposed rule in accordance with Executive Order 13175 (65 FR 67249) and determined that it does not have “tribal implications” as defined in that order. As proposed, the rule does not 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.

G. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) is “to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources.” 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 654(b), 655(b). A safety or health standard is a standard “which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment.” 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) when a significant risk of material harm exists in the workplace and the standard would substantially reduce or eliminate that workplace risk. See *Industrial Union Department, AFL-CIO v. American Petroleum Institute*, 448 U.S. 607 (1980). In the cranes and derricks final rule, OSHA made such a determination with respect to the use of cranes and derricks in construction at the same time that it noted that the Agency would apply subpart CC to the activities addressed in this proposed rule (75 FR 47913, 47920–21).

This proposed rule will not reduce the employee protections put into place by the standard OSHA is updating under this rulemaking. Instead, this rulemaking likely will enhance employee safety by ensuring that the construction workers involved in demolition and underground construction receive the same safety protections from recently published subpart CC as other construction workers. The revisions also will benefit construction contractors that engage in underground construction or demolition work in addition to other types of construction work, because these contractors will now be subject to a single standard rather than having some of their construction work under subpart CC, and other work covered by existing subpart DD. This action, therefore, will clarify employer obligations by avoiding the confusion that would result if subpart CC covers part of a project and existing subpart DD covers another part of the project. Accordingly, it is unnecessary to make a separate determination of significant risk, or the extent to which this rule would reduce that risk, as typically

required by *Industrial Union Department*.

List of Subjects in 29 CFR Part 1926

Construction industry, Demolition, Occupational safety and health, Safety, Underground construction.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, authorized the preparation of this notice. OSHA is issuing this proposed rule under the following authorities: 29 U.S.C. 653, 655, 657; 40 U.S.C. 3701 *et seq.*; 5 U.S.C. 553; Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012); and 29 CFR part 1911.

Signed at Washington, DC, on August 8, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Standards

For the reasons stated in the preamble of this proposed rule, OSHA proposes to amend 29 CFR part 1926 as follows:

PART 1926—[AMENDED]

Subpart S—Underground Construction, Caissons, Cofferdams, and Compressed Air

1. Revise the authority citation for subpart S of 29 CFR part 1926 to read as follows:

Authority: 40 U.S.C. 3701; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 5–2007 (72 FR 31159), or 1–2012 (77 FR 3912), as applicable.

2. Amend § 1926.800 by revising paragraph (t) to read as follows:

§ 1926.800 Underground construction.

* * * * *

(t) *Hoisting unique to underground construction.* Except as modified by this paragraph (t), employers must: comply with the requirements of subpart CC of this part, except that the limitation in § 1926.1431(a) does not apply to the routine access of employees to an underground worksite via a shaft; ensure that material hoists comply with § 1926.552(a) and (b) of this part; and ensure that personnel hoists comply with the personnel-hoists requirements of § 1926.552(a) and (c) of this part and the elevator requirements of § 1926.552(a) and (d) of this part.

(1) *General requirements for cranes and hoists.* (i) Materials, tools, and

supplies being raised or lowered, whether within a cage or otherwise, shall be secured or stacked in a manner to prevent the load from shifting, snagging or falling into the shaft.

(ii) A warning light suitably located to warn employees at the shaft bottom and subsurface shaft entrances shall flash whenever a load is above the shaft bottom or subsurface entrances, or the load is being moved in the shaft. This paragraph does not apply to fully enclosed hoistways.

(iii) Whenever a hoistway is not fully enclosed and employees are at the shaft bottom, conveyances or equipment shall be stopped at least 15 feet (4.57 m) above the bottom of the shaft and held there until the signalman at the bottom of the shaft directs the operator to continue lowering the load, except that the load may be lowered without stopping if the load or conveyance is within full view of a bottom signalman who is in constant voice communication with the operator.

(iv)(A) Before maintenance, repairs, or other work is commenced in the shaft served by a cage, skip, or bucket, the operator and other employees in the area shall be informed and given suitable instructions.

(B) A sign warning that work is being done in the shaft shall be installed at the shaft collar, at the operator's station, and at each underground landing.

(v) Any connection between the hoisting rope and the cage or skip shall be compatible with the type of wire rope used for hoisting.

(vi) Spin-type connections, where used, shall be maintained in a clean condition and protected from foreign matter that could affect their operation.

(vii) Cage, skip, and load connections to the hoist rope shall be made so that the force of the hoist pull, vibration, misalignment, release of lift force, or impact will not disengage the connection. Moused or latched open-throat hooks do not meet this requirement.

(viii) When using wire rope wedge sockets, means shall be provided to prevent wedge escapement and to ensure that the wedge is properly seated.

(2) *Additional requirements for cranes.* Cranes shall be equipped with a limit switch to prevent overtravel at the boom tip. Limit switches are to be used only to limit travel of loads when operational controls malfunction and shall not be used as a substitute for other operational controls.

(3) *Additional requirements for hoists.* (i) Hoists shall be designed so that the load hoist drum is powered in both directions of rotation, and so that brakes

are automatically applied upon power release or failure.

(ii) Control levers shall be of the "deadman type" which return automatically to their center (neutral) position upon release.

(iii) When a hoist is used for both personnel hoisting and material hoisting, load and speed ratings for personnel and for materials shall be assigned to the equipment.

(iv) Material hoisting may be performed at speeds higher than the rated speed for personnel hoisting if the hoist and components have been designed for such higher speeds and if shaft conditions permit.

(v) Employees shall not ride on top of any cage, skip or bucket except when necessary to perform inspection or maintenance of the hoisting system, in which case they shall be protected by a body belt/harness system to prevent falling.

(vi) Personnel and materials (other than small tools and supplies secured in a manner that will not create a hazard to employees) shall not be hoisted together in the same conveyance. However, if the operator is protected from the shifting of materials, then the operator may ride with materials in cages or skips which are designed to be controlled by an operator within the cage or skip.

(vii) Line speed shall not exceed the design limitations of the systems.

(viii) Hoists shall be equipped with landing level indicators at the operator's station. Marking the hoist rope does not satisfy this requirement.

(ix) Whenever glazing is used in the hoist house, it shall be safety glass, or its equivalent, and be free of distortions and obstructions.

(x) A fire extinguisher that is rated at least 2A:10B:C (multi-purpose, dry chemical) shall be mounted in each hoist house.

(xi) Hoist controls shall be arranged so that the operator can perform all operating cycle functions and reach the emergency power cutoff without having to reach beyond the operator's normal operating position.

(xii) Hoists shall be equipped with limit switches to prevent overtravel at the top and bottom of the hoistway.

(xiii) Limit switches are to be used only to limit travel of loads when operational controls malfunction and shall not be used as a substitute for other operational controls.

(xiv) Hoist operators shall be provided with a closed-circuit voice communication system to each landing station, with speaker microphones so located that the operator can

communicate with individual landing stations during hoist use.

(xv) When sinking shafts 75 feet (22.86 m) or less in depth, cages, skips, and buckets that may swing, bump, or snag against shaft sides or other structural protrusions shall be guided by fenders, rails, ropes, or a combination of those means.

(xvi) When sinking shafts more than 75 feet (22.86 m) in depth, all cages, skips, and buckets shall be rope or rail guided to within a rail length from the sinking operation.

(xvii) Cages, skips, and buckets in all completed shafts, or in all shafts being used as completed shafts, shall be rope or rail-guided for the full length of their travel.

(xviii) Wire rope used in load lines of material hoists shall be capable of supporting, without failure, at least five times the maximum intended load or the factor recommended by the rope manufacturer, whichever is greater. Refer to § 1926.552(c)(14)(iii) of this part for design factors for wire rope used in personnel hoists. The design factor shall be calculated by dividing the breaking strength of wire rope, as reported in the manufacturer's rating tables, by the total static load, including the weight of the wire rope in the shaft when fully extended.

(xix) A competent person shall visually check all hoisting machinery, equipment, anchorages, and hoisting rope at the beginning of each shift and during hoist use, as necessary.

(xx) Each safety device shall be checked by a competent person at least weekly during hoist use to ensure suitable operation and safe condition.

(xxi) In order to ensure suitable operation and safe condition of all functions and safety devices, each hoist assembly shall be inspected and load-tested to 100 percent of its rated capacity: at the time of installation; after any repairs or alterations affecting its structural integrity; after the operation of any safety device; and annually when in use. The employer shall prepare a certification record which includes the date each inspection and load-test was performed; the signature of the person who performed the inspection and test; and a serial number or other identifier for the hoist that was inspected and tested. The most recent certification record shall be maintained on file until completion of the project.

(xxii) Before hoisting personnel or material, the operator shall perform a test run of any cage or skip whenever it has been out of service for one complete shift, and whenever the assembly or components have been repaired or adjusted.

(xxiii) Unsafe conditions shall be corrected before using the equipment.

(4) *Additional requirements for personnel hoists.* (i) Hoist drum systems shall be equipped with at least two means of stopping the load, each of which shall be capable of stopping and holding 150 percent of the hoist's rated line pull. A broken-rope safety, safety catch, or arrestment device is not a permissible means of stopping under this paragraph.

(ii) The operator shall remain within sight and sound of the signals at the operator's station.

(iii) All sides of personnel cages shall be enclosed by one-half inch (12.70 mm) wire mesh (not less than No. 14 gauge or equivalent) to a height of not less than 6 feet (1.83 m). However, when the cage or skip is being used as a work platform, its sides may be reduced in height to 42 inches (1.07 m) when the conveyance is not in motion.

(iv) All personnel cages shall be provided with a positive locking door that does not open outward.

(v) All personnel cages shall be provided with a protective canopy. The canopy shall be made of steel plate, at least 3/16-inch (4.763 mm) in thickness, or material of equivalent strength and impact resistance. The canopy shall be sloped to the outside, and so designed that a section may be readily pushed upward to afford emergency egress. The canopy shall cover the top in such a manner as to protect those inside from objects falling in the shaft.

(vi) Personnel platforms operating on guide rails or guide ropes shall be equipped with broken-rope safety devices, safety catches or arrestment devices that will stop and hold 150 percent of the weight of the personnel platform and its maximum rated load.

(vii) During sinking operations in shafts where guides and safeties are not yet used, the travel speed of the personnel platform shall not exceed 200 feet (60.96 m) per minute. Governor controls set for 200 feet (60.96 m) per minute shall be installed in the control system and shall be used during personnel hoisting.

(viii) The personnel platform may travel over the controlled length of the hoistway at rated speeds up to 600 feet (182.88 m) per minute during sinking operations in shafts where guides and safeties are used.

(ix) The personnel platform may travel at rated speeds greater than 600 feet (182.88 m) per minute in completed shafts.

* * * * *

Subpart T—Demolition

3. Revise the authority citation for subpart T of 29 CFR part 1926 to read as follows:

Authority: 40 U.S.C. 3701; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 5-2007 (72 FR 31159), or 1-2012 (77 FR 3912), as applicable.

4. Amend § 1926.856 by revising paragraph (c) to read as follows:

§ 1926.856 Removal of walls, floors, and material with equipment.

* * * * *

(c) Cranes, derricks, and other mechanical equipment used must meet the requirements specified in subparts N, O, and CC of this part.

5. Amend § 1926.858 by revising paragraph (b) to read as follows:

§ 1926.858 Removal of steel construction.

* * * * *

(b) Cranes, derricks, and other hoisting equipment used must meet the requirements specified in subparts N and CC of this part.

* * * * *

Subpart DD—[Removed]

6. Remove subpart DD.

[FR Doc. 2012-20170 Filed 8-16-12; 8:45 am]

BILLING CODE 4510-26-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 12-201; FCC 12-77]

Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission seeks comment on proposals to reform the Commission's policies and procedures for assessing and collecting regulatory fees. Extensive changes have occurred in the communications marketplace, and in the Commission's regulatory efforts, since the Schedule of Regulatory Fees was enacted by Congress in 1994. In the period directly following enactment of the Telecommunications Act of 1996, industry development and Commission regulation centered primarily on wireline local and long distance communications.

Subsequently, however, the mobile wireless industry has grown exponentially, shifting Commission resources to, among other things, the wireless industry, while the costs of implementing the 1996 Telecommunications Act decreased. These changes have produced corresponding shifts in the Commission's regulatory activity. These shifts in the cost of the Commission's activities are not always reflected in our current regulatory fees. Although the Commission has made a number of discrete changes to the regulatory fee program since 1994, we have not revised the data on which our fees are based since 1998, nor have we undertaken a comprehensive analysis of all the substantive and procedural aspects of our regulatory fee program in light of the current state of the communications industry. This proceeding will serve as the means by which we will seek comment on the issues related to how the Commission should allocate its regulatory costs among different segments of the communications industry.

DATES: Comments are due September 17, 2012 and reply comments are due October 16, 2012.

ADDRESSES: You may submit comments, identified by MD Docket No. 12–201, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: 202–418–0530 or TTY: 202–418–0432.

- *Email:* ecfs@fcc.gov. Include MD Docket No. 12–201 in the subject line of the message.

- *Mail:* Commercial overnight mail (other than U.S. Postal Service Express Mail, and Priority Mail, must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington DC 20554.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 12–77, MD Docket No. 12–201, adopted on July 13, 2012 and released on July 17, 2012. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, <http://www.bcpi.com>, or call 1–800–378–3160. This document is available in alternative formats (computer diskette, large print, audio record, and braille). Persons with disabilities who need documents in these formats may contact the FCC by email: FCC504@fcc.gov or phone: 202–418–0530 or TTY: 202–418–0432.

I. Procedural Matters

A. Ex Parte Information

1. The proceeding this NPRM initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.¹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by

rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Comment Filing Procedures

2. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

¹ 47 CFR 1.1200 *et seq.*

■ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

3. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY-A257, Washington, DC 20554. These documents will also be available free online, via ECFS. Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.

4. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format ("PDF") at: <http://www.fcc.gov>.

C. Initial Paperwork Reduction Act of 1995 Analysis

5. This document solicits possible proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the possible proposed information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

D. Initial Regulatory Flexibility Analysis

6. An initial regulatory flexibility analysis ("IRFA") is contained in the Initial Regulatory Flexibility Analysis section. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on this NPRM. The Commission will send a copy of this NPRM, including the

IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

II. Introduction

7. Today we seek comment on proposals to reform the Commission's policies and procedures for assessing and collecting regulatory fees. Extensive changes have occurred in the communications marketplace, and in the Commission's regulatory efforts, since the Schedule of Regulatory Fees was enacted by Congress in 1994. In the period directly following enactment of the Telecommunications Act of 1996, industry development and Commission regulation centered primarily on wireline local and long distance communications. Subsequently, however, the mobile wireless industry has grown exponentially, shifting Commission resources to, among other things, the wireless industry, while the costs of implementing the 1996 Telecommunications Act decreased. Meanwhile, digital and Internet protocol (IP)-based technologies have enabled wired and wireless companies, satellite companies, broadcasters, and cable television companies to engage in increased intermodal competition.

8. These changes have produced corresponding shifts in the Commission's regulatory activity. These shifts in the cost of the Commission's activities are not always reflected in our current regulatory fees. Although the Commission has made a number of discrete changes to the regulatory fee program since 1994, we have not revised the data on which our fees are based since 1998, nor have we undertaken a comprehensive analysis of all the substantive and procedural aspects of our regulatory fee program in light of the current state of the communications industry. This proceeding will serve as the means by which we will undertake that comprehensive analysis.²

9. This Notice of Proposed Rulemaking (NPRM) seeks comment on the issues related to how the Commission should allocate its regulatory costs among different segments of the communications industry. In particular, we seek comment on:

• *What the Overarching Goals of the Regulatory Fee Program Should Be.* We

² A number of comments on revising the regulatory fee program were received in MD Docket No. 08-65. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, Report and Order and Further Notice of Proposed Rulemaking, 73 FR 50285 (August 26, 2008) ("FY 2008 Further Notice of Proposed Rulemaking"). We will incorporate those comments into the record of this proceeding.

propose three goals to guide our regulatory fee policymaking—fairness, administrability, and sustainability—and we seek comment on these goals and invite commenters to propose others.

• *Regulatory Costs Should Be Allocated.* Section 9 of the Communications Act requires that regulatory fees be derived by determining the number of full-time equivalent employees (FTEs) performing certain activities. We propose to change the way we allocate "direct" and "indirect" FTEs to calculate regulatory fees. The proposals on which we seek comment are based on aggregated bureau-level FTE data, and would allocate all FTEs in the Wireless Telecommunications, Media, Wireline Competition, and International Bureaus as "direct" and all FTEs in the support bureaus and offices as "indirect."

• *How Current Cost Allocation Percentages Should Be Revised.* We then look at the cost allocation percentages that we use now and propose to update these percentages using current FTE data derived from the reallocation of FTEs described above. We set out the adjustments projected to result from these updates, examine the impact of these adjustments on the categories of fee payors, ask whether and how we should mitigate the impact of any substantial fee increases that would result, and ask whether any other changes are necessary to ensure an equitable result.

III. Background

A. Statutory Framework

10. Section 9(a)(1) of the Communications Act directs the Commission to collect regulatory fees "to recover the costs of * * * enforcement activities, policy and rulemaking activities, user information services, and international activities."³ Section 9(a)(2) stipulates that regulatory fees for the enumerated activities "shall be collected only if, and only in the total amounts, required in Appropriations Acts," and must "be established in amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance of the activities described in subsection (a)."⁴ Since FY 2009, Congress has directed the Commission to assess and collect regulatory fees under section 9(b)(1)(B)

³ 47 U.S.C. 159(a)(1).

⁴ *Id.* 159(a)(2), (b)(1)(B).

in an amount equal to the entire amount appropriated.⁵

11. Section 9(b) states in general terms how regulatory fees are to be derived. Section 9(b)(1)(A) states that fees are to be calculated by determining the full-time equivalent number of employees (FTEs) performing the activities enumerated in section 9(a)(1) “within the three licensing bureaus as they existed at that time and that formed the core of our regulatory fee assessment program, i.e. the Private Radio Bureau, Mass Media Bureau, and Common Carrier Bureau.”⁶ FTEs in the other offices of the Commission are also calculated, and the fees that result are adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest.”⁷ The Commission issues a notice of proposed rulemaking (NPRM) in the third quarter of each fiscal year, stating how it derives the fees for that fiscal year and proposing the amounts that the payors in each fee category will be required to pay in order to offset the amount of the Commission’s appropriation for that fiscal year.⁸ The Commission issues a report and order

during the fourth quarter of each fiscal year.⁹ The report and order sets the amounts to be paid by all fee payors, discusses any issues raised in response to the NPRM and sets out the procedures for payment of fees.

B. Historic Regulatory Approach

12. Section 9(b)(1)(A) states that regulatory fees are to recover the costs of the FTEs performing the regulatory activities set forth in section 9(a)(1). Consistent with this statutory requirement, the Commission’s cost assessment methodology uses FTEs as the starting point in determining the fees regulatees in each fee category will pay each fiscal year.

13. Although the statute specifies that FTEs are the basis for calculating regulatory fees, it does not specify the precise type of FTE data that must be used; e.g., whether the Commission must use employees’ time cards to tally the time each employee reports as having been spent on regulating specific licensees or regulatees, or whether the Commission may aggregate the work of FTEs in some other way. In FYs 1997–1998, the Commission based its FTE calculations on employee time cards. This method involved employees’ tracking time by regulatory fee category, and regulatory fees were then allocated based on a core bureaus’ relative share of employee time, both direct (employees within a core bureau working on matters related to regulatory fee categories within that bureau) and indirect (employees from all bureaus and offices providing support functions related to multiple, perhaps even all, regulatory fee categories). The Commission abandoned this approach in FY 1999 because not only did time card entries prove subjective and unreliable, but they also resulted in unpredictable and substantial shifts in regulatory fees from year to year.

14. The allocations of direct and indirect FTEs we currently use are taken from FTE data compiled in FY 1998. The Commission allocates FTEs according to the nature of the employees’ work. If the work performed by an employee can be assigned to a regulatory fee category in one of the four core licensing bureaus—Wireless Telecommunications, Media, Wireline Competition, and International, — that employee’s time is counted as a direct FTE. If the work cannot be assigned to one of the bureau’s designated fee categories, the employee’s time is

counted as an indirect FTE. Indirect FTEs are allocated proportionally across the four core bureaus. Therefore, under our current system, the total FTEs for each fee category includes the direct FTEs associated with that category, plus proportional allocations of indirect FTEs from inside and outside the bureau. The total number of FTEs for each of the bureau’s fee categories was then divided by the combined FTE numbers for all four core bureaus to produce an allocation percentage for each fee category, e.g., the percentage of total regulatory fee revenues that must be recovered from each fee category in order to collect the total amount specified by Congress.¹⁰

15. Although the Commission has used the same allocation percentages every fiscal year since FY 1998, each year the Commission reviews the projected number of fee payors in each service category. These payors are referred to generically as “units,” because the fees for payors in different service categories reflect characteristics appropriate to each service, such as the number of licenses or number of subscribers the fee payor has. We look for changes in the industry, changes in industry segments, and various other issues as explained in each year’s regular regulatory fee NPRM. Finally, the fee rate for each fee category is determined by dividing the revenue amount to be collected from each fee category by its projected number of units.

16. Table 1 illustrates the process using this methodology. Each fiscal year Congress reviews the Commission’s budget submission and determines the appropriation for that year. The amount Congress appropriates becomes the target for the aggregate amount of regulatory fees to be collected. Table 1 uses a hypothetical appropriation of \$100,000,000 as the target amount of regulatory fees to be collected. Column 1 represents the various fee categories in which a regulatee will pay a fee. Column 2 shows the allocation percentages that are applied. And Column 3 represents the multiplication of the target amount by each allocation percentage.

17. The Commission first multiplies the \$100,000,000 target amount by the

⁵ See, e.g., Consolidated Appropriations Act, 2012, Public Law 112–74 (Dec. 23, 2011) (appropriating \$339,844,000 and providing “[t]hat \$339,844,000 of offsetting collections shall be assessed and collected pursuant to section 9 of title I of the Communications Act of 1934, [and] shall be retained and used for necessary expenses in this appropriation”). In prior years (FY 2004 through FY 2008), Congress directed the Commission to offset all but \$1 million of its appropriation. See Consolidated Appropriations Act, 2004, Public Law 108–99, 118 Stat. 3 (2004); Consolidated Appropriations Act, 2005, Public Law 108–447, 118 Stat. 2809, 2908 (2004); Science, State, Justice, Commerce and Related Agencies Appropriation Act, 2006, Public Law 109–108, 199 Stat. 2290, 2329–30 (2005); Continuing Appropriations Resolution, 2007, Public Law 110–5, 121 Stat. 8 (2007); and Consolidated Appropriations Act, 2008, Public Law 110–161, 121 Stat. 1844, 1998 (2007). In the Omnibus Appropriations Act, 2009, Public Law 111–8, 123 Stat. 524, 657 (2009) Congress required, for the first time that the Commission collect fees in the full amount of its appropriation.

⁶ Subsequent to the enactment of section 9 the Commission reorganized and renamed the Private Radio Bureau, Mass Media Bureau, and Common Carrier Bureaus as the Wireless Telecommunications Bureau, Media Bureau, and Wireline Competition Bureau respectively. Regulation of international telecommunications was transferred from these Bureaus and consolidated into a new International Bureau. For simplicity and ease of reference, in this NPRM we will refer to these four bureaus as the “core” bureaus or the “core licensing” bureaus.

⁷ 47 U.S.C. 159(b)(1)(A).

⁸ See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2011*, Notice of Proposed Rulemaking, 26 FCC Rcd 7068 (2011) (“FY 2011 Notice of Proposed Rulemaking”).

⁹ See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2011*, Report and Order, 26 FCC Rcd 10812 (2011) (“FY 2011 Report and Order”).

¹⁰ The Schedule of Regulatory Fees enacted as section 9(g) in 1994 contained the fees to be paid by different categories of regulatees in the (then) three named bureaus. Section 9(g) specified that the Commission was to use this fee schedule until the Commission adjusted it pursuant to section 9(b). The Commission has made substantial adjustments to this fee schedule since 1994, adding fee categories and altering others. The 46 categories of fee payors listed in the original fee schedule had grown to 86 in 2011.

current FTE allocation percentages in Column 2 to determine the amount of revenue to be collected from each fee category in Column 3. To determine the regulatory fee rate, the amounts in Column 3 are divided by their

respective unit counts (the number of payors) to determine the fee amount that each regulatee will pay in that fee category prior to rounding pursuant to section 9(b)(2)(B). Thus, each year the regulatory fee rate is a function of (1)

changes in the appropriation amount from one year to the next, and (2) changes in the unit count from the prior year for each respective fee category.

TABLE 1—HYPOTHETICAL \$100 MILLION TARGET GOAL ALLOCATIONS

Fee category Column One	Starting point FTE allocation percentage (%) Column Two	Expected revenue amount by fee category Column Three
PLMRS (Exclusive Use)	.14	\$140,000
PLMRS (Shared use)	.67	670,000
Microwave	.66	660,000
218–219 MHz (Formerly IVDS)	.001	1,000
Marine (Ship)	.22	220,000
GMRS	.08	80,000
Aviation (Aircraft)	.10	100,000
Marine (Coast)	.04	40,000
Aviation (Ground)	.04	40,000
Amateur Vanity Call Signs	.06	60,000
AM Class A	.07	70,000
AM Class B	.87	870,000
AM Class C	.31	310,000
AM Class D	1.03	1,030,000
FM Classes A, B1 & C3	2.13	2,130,000
FM Classes B, C, C0, C1 & C2	2.62	2,620,000
AM Construction Permits	.01	10,000
FM Construction Permits	.1	100,000
Satellite TV	.05	50,000
Satellite TV Construction Permit	.001	1,000
VHF Markets 1–10	.95	950,000
VHF Markets 11–25	.97	970,000
VHF Markets 26–50	.82	820,000
VHF Markets 51–100	.79	790,000
VHF Remaining Markets	.35	350,000
VHF Construction Permits	.01	10,000
UHF Markets 1–10	.6	600,000
UHF Markets 11–25	.49	490,000
UHF Markets 26–50	.41	410,000
UHF Markets 51–100	.35	350,000
UHF Remaining Markets	.11	110,000
UHF Construction Permits	.07	70,000
Broadcast Auxiliaries	.08	80,000
LPTV/Translators/Boosters/Class A TV	.40	400,000
CARS Stations	.05	50,000
Cable TV Systems	16.55	16,550,000
Interstate Telecommunication Service Providers	46.66	46,660,000
CMRS Mobile Services (Cellular/Public Mobile)	14.33	14,330,000
CMRS Messaging Services	.32	320,000
BRS	.16	160,000
LMDS	.03	30,000
Per 64 kbps Int'l Bearer Circuits, Terrestrial (Common) & Satellite (Common & Non-Common)	.32	320,000
Submarine Cable Providers	2.28	2,280,000
Earth Stations	.25	250,000
Space Stations (Geostationary)	3.23	3,230,000
Space Stations (Non-Geostationary)	.24	240,000
***** Total Estimated Revenue To Be Collected	100.00	100,022,000

C. The Problems of the Current Approach

18. As noted previously, the changes that have occurred since 1998 in the communications industry have caused significant shifts in the amount of time the Commission devotes to specific industry segments and activities.

Therefore, FY 1998 FTE data may no longer accurately reflect the allocation of Commission employees' time across different parts of the industry. However, simply substituting current FTE data for the 1998 FTE data would cause fees for some classes of fee payors to increase significantly, so we seek to examine how best to address in a fair and

equitable manner any significant shifts. In addition, new technologies have caused an exponential increase in intermodal competition across formerly distinct industry platforms. This has made it even more common today than in 1998 that a Commission employee's work may be attributed to more than one fee category. For example, the cost

of an employee's work in designing incentive auctions might be attributable to several fee categories within the media sector, but it would also potentially benefit providers of mobile broadband services who would ultimately use the reclaimed spectrum. The practical difficulties we would encounter today in parsing out an employee's time among all of the industry groups affected by his or her work would produce unpredictable annual changes in regulatory fees. Proposals to address these and related problems are presented below.

IV. Issues Raised For Comment

A. Setting Goals To Guide Our Approach to Regulatory Fees

19. First, we seek comment on setting goals for regulatory fee collection that will guide the reforms that result from this NPRM and adjustments that the Commission will need to make from time to time afterwards. We are of course guided first and foremost by Congress's direction in section 9. At the same time, Congress has left us flexibility in setting the fees to take into account a variety of factors, including "factors that the Commission determines are necessary in the public interest."¹¹ We propose three overarching goals for the regulatory fees program, and we invite parties to propose other goals for consideration.

20. *Fairness.* Allocation of regulatory fee burdens among regulatees should be fair. All regulatees interact with and benefit from the work of the Commission, but not in equal measure. For example, a very large company with hundreds of licenses and authorizations is likely to engage much more frequently with the Commission than a local company or cooperative. Similarly, regulatees' ability to pay varies with their size and revenues—imposing the same fee on a Fortune 500 company and a local family business would have very different effects on those entities. And over time, as similar services are provided over different technologies, regulatees may be paying different fees while providing similar services, not because there is a meaningful difference in their relationship with the Commission but simply because their services fall into different fee categories (or fall outside our established categories altogether). We propose establishing fairness as a goal of our regulatory fee program, so that the burdens of regulatory fees are borne in an equitable manner that does not

distort the marketplace. We seek comment on this goal.

21. *Administrability.* Section 9 directs that fees be set by reference to the number of FTEs performing enforcement activities, policy and rulemaking activities, user information services, and international activities within the Wireless Telecommunications, Media, Wireline Competition, and International Bureaus. A fee system that strictly aligned FTEs with these activities and Bureaus on an ongoing basis would require a complex time and accounting system like the one the Commission tried in 1997 and 1998 and abandoned in 1999 due in part to the unpredictability and rapid shifts in fee rates that it created for fee payors. Keeping the fee schedule up to date could result in large shifts in fees from year to year, as the Commission's priorities and areas of focus change. For example, if in one year the Public Safety and Homeland Security Bureau handles rulemakings related to broadcasting, but in the following year focuses on wireless services, the resulting shift in FTE allocations could have a substantial impact on the size of regulatory fees, which could then shift significantly again the very next year. We believe that the regulatory fee system should be administrable, both for the Commission and for payors. We seek comment on this goal.

22. *Sustainability.* The methodology for regulatory fees should be flexible enough to adapt to changes in technology and marketing that affect how our regulatees do business. In 2007, the Commission extended regulatory fee obligations to providers of interconnected voice over Internet protocol services (VoIP), noting "the many and increasing resources the Commission now dedicates to VoIP" and that "[i]nterconnected VoIP service is increasingly used to replace traditional telephone service and . . . the interconnected VoIP service industry continues to grow and to attract customers who previously relied on traditional voice service."¹² The concern the Commission addressed in 2007 will continue to arise as service platforms and models change and converge. As video, voice, and data services are provided in new ways, our regulatory fee system must also evolve to ensure that the fee burden remains equitably distributed among regulatees. We seek comment on this goal.

23. Our goals must work within the statute, not against it. Section 9 requires

that the Commission collect fees by determining "the full-time equivalent number of employees" performing specified activities in the Bureaus and Offices. We intend that the proposed goals guide our interpretation of section 9, and we seek comment on the best ways to take the goals into account as we assign FTEs to the statutory categories and establish specific fee amounts.

B. Changing the Current Cost Allocation Methodology

24. As explained more fully below, the cost allocation data we currently use were derived in FY 1998 by totaling employees' time cards entries to arrive at the aggregate number of FTEs engaged in each feeable activity. The first question that arises is whether the Commission should aggregate employee time card entries to derive its FTE allocations, or whether aggregating data on a less granular basis would be accurate and workable. For the reasons discussed below, we seek comment on whether we should simplify the way direct and indirect FTEs are aggregated and update the FTE data that we use. We invite interested parties to share their views with respect to the issues set forth below.

1. Reallocation of FTEs Among Bureaus

25. Although not required by section 9, our current cost assignment methodology is based on the presumption that work of employees in the four core bureaus should be treated differently depending on whether an employee is "directly" involved in a feeable activity or "indirectly" involved, as in a support capacity. The costs of FTEs directly working on projects corresponding to a regulatory fee category are directly assigned to that category. By contrast, the costs of all FTEs in the core bureaus indirectly involved, or providing support functions, are treated as indirect costs and are currently distributed proportionally across the four core bureau. The proportional allocation of indirect FTEs corresponds to each core bureau's actual percentage of direct FTEs. The indirect work performed by FTEs within a core bureau, therefore, may not be attributable to a specific fee category in their core bureau. Nevertheless, it is clear that the work of *all* the FTEs in a core bureau, whether direct or indirect, contributes to the cost of regulating licensees of that bureau. Therefore, we may reasonably expect that the work of the FTEs in the core bureaus would remain focused on the industry segment regulated by each of

¹² *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order, 22 FCC Rcd 15712, 15717–18 paras. 12–13 (2007).

¹¹ 47 U.S.C. 159(b)(1)(A).

those bureaus.¹³ We seek comment on whether we should change the way FTEs are allocated within a bureau, and we propose that all the FTEs in each of the core bureaus should be considered direct FTE costs for that bureau.

26. Most of the work of the bureaus and offices outside the four core licensing bureaus is currently considered as indirect FTE costs because the work does not focus on any one industry segment; rather, these bureaus and offices support the work of all of the core bureaus. As with the indirect FTEs within the core bureaus, the work of FTEs in non-core bureaus that cannot be directly assigned to a regulatory fee category is treated as indirect costs and distributed proportionally across the core bureaus according to these bureaus' respective percentages of the Commission's total direct FTE costs. As in the case of our allocation of direct FTEs, we believe that it would serve the public interest to find a more consistent and workable way to allocate indirect FTEs. Any attempt to redistribute these indirect costs on a task-by-task basis would be neither consistent nor workable, requiring us to assign more costs to certain divisions of support bureaus or offices for certain licensees at a given point in time, and then reassign these costs as the work of that division changes from month to month, week to week, or even day to day.¹⁴ This would be far more complicated and subjective than our current approach, requiring constant recalculations as FTEs within a bureau are given different job assignments.¹⁵ Unlike the case of the FTEs in the core bureaus, the work of the FTEs in the support bureaus and offices is not primarily focused on any one bureau or regulatory fee category, but instead serves the needs of all four core bureaus.

27. Just as section 9 contains no requirement that we classify FTEs as

"direct" and "indirect," it does not prescribe how the Commission should account for the FTE costs of its support bureaus and offices. Consistent with our finding in paragraph 19 above that the work of the employees in the core bureaus and offices is primarily focused on the industry segment regulated by each bureau and that the work—and the costs—of all the employees of those bureaus would correctly be considered direct FTE costs of their respective bureaus, we seek comment on whether, because the work of employees in the non-core bureaus supports the work of all the core bureaus, the FTE costs of these non-core bureaus and offices should all be treated as indirect costs and allocated among each of the core bureaus in the same percentage as that bureau's direct FTE percentage is to the total direct FTE costs of all the core bureaus.

2. Updating and Adjusting the Allocation Percentages Among Bureaus

28. We have previously sought comment on whether and how to update our current FTE allocation percentages to reflect changes in the industry and in the Commission's workload that have occurred since they were adopted.¹⁶ We will resolve this issue in this proceeding, and we will incorporate into the record of this proceeding relevant comments filed in prior proceedings.¹⁷

29. Commenters previously addressing this issue advocated that we revise the FTE allocation percentages by using updated FTE data.¹⁸ They argued that it is inequitable to burden the licensees in the core bureaus with a larger share of regulatory fees than their respective percentage share of FTE staffing at the Commission. We seek comment on whether the FY 1998 FTE allocation percentages should be

replaced with allocation percentages using up-to-date FY 2012 FTE data.

30. Reallocation of direct and indirect FTEs using aggregated FTE data involves counting the number of FTEs in each of the agency's four core licensing bureaus to determine what percentage each comprises of the total number of FTEs in all the core bureaus.¹⁹ The tentative results of this recalculation, using current FTE staffing levels, produces the following numbers and percentages of direct FTEs in the four core licensing bureaus: International Bureau, 122 FTEs (22.0% of total FTEs in the four core bureaus); Media Bureau, 183 (32.9%); Wireline Competition Bureau, 154 (27.7%); and Wireless Telecommunications Bureau, 97 (17.4%).²⁰ These 556 FTEs constitute 36 percent of the Commission's total FTEs and we would treat them as direct FTE costs for purposes of allocating regulatory fees. There are currently 1,000 FTEs in the support bureaus and offices. As proposed in paragraph 20 above, these would all be treated as indirect FTEs and allocated proportionately across the four core bureaus. This produces the following adjusted FTE totals for each of the core bureaus: International Bureau, 221 FTEs; Media Bureau, 329 FTEs; Wireline Competition Bureau, 276 FTEs; and Wireless Telecommunications Bureau, 174 FTEs.

31. A comparison of the allocation percentages currently in use with the allocation percentages that result from the use of updated FTE figures produces mixed results. The percentage of regulatory fees currently collected from regulatees in the Wireless Telecommunications Bureau would remain unchanged at 17.4 percent. The allocation percentage would increase only slightly for fee payors in Media Bureau service categories, from 31.9 percent to 32.9 percent. However, use of the updated FTE figures would reduce the percentage of regulatory fees allocated to regulatees in the Wireline Competition Bureau from 44.0 percent to 27.7 percent and increase the percentage of fees allocated to payors in the International Bureau from 6.7 percent to 22.0 percent.

32. We seek comment on whether the projected increase in fees for International Bureau regulatees would be consistent with our goals of fairness

¹³ The International Bureau may be an exception to this expectation as discussed in Paragraphs 26—28 below.

¹⁴ For example, under this approach the work of attorneys and support staff in Litigation and Administrative Law Divisions of the Office of General Counsel would fluctuate, and the corresponding costs would have to be continually reassigned, depending on how much of their work is being devoted to media, wireless, wireline and other matters.

¹⁵ For example, the Satellite Industry Association (SIA) states that certain divisions in the Enforcement Bureau may not be relevant to regulating satellite licensees. SIA reply comments at 8, *FY 2008 Further Notice of Proposed Rulemaking*, *supra* n. 1. While that may be true at a given point in time, at another time all members of that division may be engaged in an investigation involving satellite providers, or certain members engaged in investigations or other activity affecting satellite providers, either directly or indirectly.

¹⁶ *FY 2008 Further Notice of Proposed Rulemaking*, *supra* n. 1, at paras. 27–30. We also released a Public Notice on September 3, 2008 providing information on FTEs, direct costs, and indirect costs. See "Office of Managing Director Releases Data to Assist Commenters on Issues Presented in Further Notice of Proposed Rulemaking," Adopted August 1, 2008, MD Docket No. 08–65, Public Notice, DA 08–2033 (September 3, 2008).

¹⁷ To assure that all previous comments are considered, parties that have previously commented on any of these issues are requested to attach or cite their prior comments in their filings in this proceeding.

¹⁸ See, e.g., USTA Comments at 2; AT&T Comments at 3; FIT Reply Comments at 5; EWA Reply Comments at 1–2; Sprint Reply Comments at 2; NTCA Reply Comments at 2; MetroPCS Reply Comments at 2; CTIA Reply Comments at 3; AT&T Reply Comments, *FY 2008 Further Notice of Proposed Rulemaking*, *supra* n. 1.

¹⁹ FTEs are based on actual end of fiscal year 2011 figures, the most recent data that is currently available.

²⁰ These totals represent only the number of direct FTEs funded by regulatory fees. They do not include direct FTEs funded by other revenues, e.g., by auction or USF proceeds, nor do they include indirect FTEs.

and sustainability. In this regard we note that much of the work within the Strategic Analysis and Negotiations Division of the International Bureau covers services outside of the Bureau's direct regulatory activities. For example, this Division has primary responsibility for leading the Commission's international representation in bilateral meetings, multilateral meetings, and cross-border spectrum negotiations with Canada and Mexico on spectrum sharing arrangements, and notifications to the International Telecommunications Union (ITU), as well as participation in ITU Study Groups. Though focused on the international community, this international work covers the entire gamut of the Commission's regulatory responsibilities.

33. If such work benefits all classes of providers, should the associated FTEs be excluded from the International Bureau's direct costs and, instead, be allocated as indirect costs like a support bureau? Is this situation unique to the International Bureau? The International Bureau has estimated that as much as one half of the FTEs in the Bureau work on matters covering services other than international services. Reallocation of 50% of the FTEs in the International Bureau proportionately to the other core bureaus would result in the following allocation: International Bureau, 61 FTEs, representing 10.97% of total FTEs in the four core bureaus; Media Bureau, 208.72 (37.54%); Wireline Competition Bureau, 175.64 (31.59%); and Wireless Telecommunications Bureau, 110.64 (19.9%).

34. We ask commenters to address all the issues regarding how to ameliorate the effect of using updated FTE data on regulatees paying fees in the International Bureau's service categories. Would this reallocation be equitable?

35. Are there analogous groups within the other core bureaus whose work covers services outside of the core bureau's direct regulatory activities? If so, how should those FTEs be allocated, or should adjustments be made to our proposed allocation of FTEs for those core bureaus to account for such broadly cross-cutting work in a core bureau? We also seek comment on whether further adjustments of the allocation of FTEs should be made. Should adjustments be made whenever, as discussed above, the work of one bureau supports the work of one or more other bureaus? Would this be a workable and sufficient way to allocate regulatory fees fairly between industry sectors consistent with section 9, or is there a more equitable way, consistent with statute, to allocate

regulatory fees between and/or within industry sectors? For example, should regulatory fee categories in section 9 be combined or eliminated, given the change in the telecommunications landscape since 1998? Should additional regulatory fee categories such as broadband be added to the regulatory fee schedule set forth in section 9? We seek comment on whether the Commission has authority, under section 9, to include broadband as a fee category. If additional fee categories are created, how should their costs be assessed? To the extent that licensees offer services that are regulated by more than one core bureau, how would the addition of new fee categories affect the allocation of FTEs by core bureau?

36. We note that section 9(b)(1)(A) allows the Commission to adjust regulatory fees "to take into account factors that are reasonably related to the benefits provided the payor of the fee by the Commission's activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines to be in the public interest." How should "benefits provided to the payor" be determined? Should such benefit be measured by the level of regulation of such payor, or by some measure of the amount of regulatory activity attributable to a specific payor in a given year? Or should "benefits provided the payor" be found to include all benefits received as a result of the Commission's work, even benefit from efforts to reduce regulation of a particular industry sector? How does one measure such benefit? Is relative market share, or total revenues, a good measure of the benefit the payor receives from the work of the Commission to promote competition and remove barriers to market entry? If so, should all payors be assessed based on revenues? Is it technically feasible to assess all regulatory fee categories based on revenues? How could the Commission ensure such assessment is based on accurate, reliable revenue information from all industry sectors? What additional reporting requirements would be necessary to obtain the information necessary to assess all payors on a revenues basis?

37. Are there other factors the Commission should consider in rebalancing regulatory fees in order to achieve the goals discussed above? For example, does section 9 allow the Commission to mitigate the effects of fee increases to a particular industry segment by providing interim adjustments, by phasing in the new fees over a period of time, or by providing relief in some other way? How would

the Commission administer any recommended mitigation?

38. Finally, how often should the Commission revisit the allocation resulting from this rulemaking? Should this reexamination be undertaken at regular intervals, or in response to comments by fee payors in the annual regulatory fee collection NPRM? If such reexamination is done at regular intervals, for example, annually, how can we ensure continued predictability and collectability of fees? Would it be appropriate to simply update the Commission's FTE allocation each year, without regard to the impact of significant increases of regulatory fees on certain regulatory fee categories? Would such fluctuations be especially problematic for small service providers who are likely least able to absorb unpredictable changes in fees from year to year?

3. Reallocation of FTEs Within Bureaus

39. As noted previously, our current FTE allocations and the resulting allocation percentages were first used in FY 1999 and are based on FY 1998 FTE data. We request comment on updating and reallocating FTEs among the fee categories within each of the core bureaus. For example, within the International Bureau, there are five fee categories: Bearer Circuits, Submarine Cable Providers, Earth Stations, Space Stations (Geostationary), and Space Stations (Non-Geostationary). Regulatory fees are currently allocated among these five fee categories as follows: Bearer Circuits (5.1%), Submarine Cable Providers (36.1%), Earth Stations (3.9%), Space Stations (Geostationary) (51.1%), and Space Stations (Non-Geostationary) (3.8%).

40. Although one option would be to continue using these relative allocation percentages among the fee categories in each of the core bureaus, we seek comment on whether it would better serve the public interest for management in each of the core bureaus to revise their internal FTE allocation percentages based on management's assessment of the current distribution of work within the bureau. We also seek comment on whether they should do such analysis and update of the FTE allocation among fee categories within the bureau every three years unless a substantial shift in the nature or extent of a bureau's duties warrants reexamination in the interim. Commenters advocating alternatives or modifications to this proposed approach should describe in specific detail how the suggested alternative or modification would work and why it would be preferable to allocation based

on assessment of the current distribution of work within the bureau described herein.

V. Conclusion

41. Fundamental to this NPRM is the Commission's desire to assure that the methodology we use to derive

regulatory fees is consistent with statutory requirements, fair, efficiently administered, and sustainable. This NPRM proposes a number of innovative alternatives designed to achieve those goals. Interested parties are invited to comment on the suitability of these

goals, the effectiveness of the alternatives proposed in this NPRM in meeting these or other appropriate goals, and the Commission's jurisdiction to adopt any of the alternatives discussed in the NPRM or proposed in response to it.

TABLE 2—LIST OF COMMENTERS

Commenter	Abbreviated name
American Association of Paging Carriers	AAPC.
AT&T, Inc	AT&T.
DirecTV, Inc. and DISH Network LLC	DirecTV and DISH.
Enterprise Wireless Alliance	EWA.
Independent Telephone and Telecommunications Alliance	ITTA.
National Cable and Telecommunications Association	NCTA.
Personal Radio Steering Group, Inc	PRSG.
PCIA—The Wireless Infrastructure Association	PCIA.
United States Telecom Association	USTA.
Verizon Communications, Inc	Verizon.

LIST OF COMMENTERS—REPLY COMMENTS

Commenter	Abbreviated name
American Cable Association	ACA.
AT&T, Inc	AT&T.
CTIA—The Wireless Association®	CTIA.
DirecTV, Inc. and DISH Network LLC	DirecTV and DISH.
Enterprise Wireless Alliance	EWA.
Forest Industries Telecommunications	FIT.
MetroPCS Communications, Inc	MetroPCS.
National Telecommunications Cooperative Association	NTCA.
Satellite Industry Association	SIA.
Sprint Nextel Corporation	Sprint.
Verizon Communications, Inc	Verizon.
Wireless Cable Coalition	WCC.

Initial Regulatory Flexibility Analysis

42. As required by the Regulatory Flexibility Act (RFA),²¹ the Commission prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this Notice of Proposed Rulemaking. The Commission will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).²² In addition, the NPRM and

IRFA (or summaries thereof) will be published in the **Federal Register**.²³

I. Need for, and Objectives of, the NPRM

43. In this NPRM we seek public comment on approaches to update and reform the process by which the Commission calculates and assesses regulatory fees under section 9 of the Communications Act. We propose to be guided in this examination by the goals of fairness, administrability, and sustainability, and we seek comment on these goals. We seek comment on four key areas regarding the regulatory fee process: (1) revising the way in which direct and indirect FTEs (full-time [employee]equivalents) are allocated; (2) using the current number of FTEs as the basis for calculating regulatory fee allocation percentages; (3) ameliorating the impact of fee increases that would otherwise result from using current FTE percentages, especially on entities providing international communication services; and (4) asking whether and how the current number of regulatory

fee categories can be changed, for example, by adding broadband and/or by reducing the number of fee categories.

44. Section 9 of the Act states that the basis for calculating regulatory costs is the number of FTEs performing enforcement, policy and rulemaking, and international activities, as well as providing user information services. The Commission has historically regarded the costs generated by individuals working specifically on those activities as “direct” costs, whereas the cost of employees providing support efforts have been considered “indirect” costs. The NPRM first seeks comment on whether to revise this approach. In order to provide a more consistent and workable way to allocate FTEs, we propose that all the direct and indirect FTEs in each of the four core licensing bureaus—The Wireless Telecommunications, Wireline Competition, Media, and International Bureaus—be allocated to the Bureau in which they work. Indirect FTEs outside the core bureaus would be allocated

²¹ 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (“CWAAA”). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”).

²² 5 U.S.C. 603(a).

²³ *Id.*

among the four core licensing bureaus in the percentage of each core bureau's direct FTEs to the total FTEs in the Commission.

45. Second, we seek comment on updating the current FTE allocation percentages to reflect the changes in the telecommunications industry and in the Commission's workload since the current percentages were developed in FY 1998. Using current FTE data to calculate regulatory fees instead of FY 1998 FTE data would produce substantial increases in the fees paid by International Bureau regulates and correspondingly substantial reduction in the fees currently paid by Interstate Telecommunications Service Providers (ITSPs, or wireline service providers), whereas fees paid by Wireless Bureau regulates would remain the same and Media Bureau regulatees would increase only slightly.

46. Third, we seek comment on whether and how we should ameliorate the impact increased fees would have on International Bureau regulatees. We ask whether the fact that FTEs in the International Bureau devote half their time to working on matters that directly benefit licensees in the remaining three core licensing bureaus would make it equitable to reallocate and redistribute half of the fee increases to those other bureaus. We also ask if there are other bureaus in which such a reallocation would be equitable.

47. Finally, we seek comment on whether the current number of fee categories in the Schedule of Regulatory fees should be expanded to include new services such as broadband, or reduced to reflect the state of the telecommunications market and to simplify the administration of the fee program. Because the statute directs the Commission to consider the benefits the payors receive from Commission regulation in setting regulatory fees, we seek comment on how better to measure the benefits on which licensees currently pay fees. For example, we seek comment on whether total revenues, or relative market share, would be good measures of the benefit payors receive from the work of the Commission to promote competition and remove barriers to market entry. Finally, we specifically seek comment on the Commission's statutory authority to implement any of these changes.

Background

II. Legal Basis

48. This action, including publication of proposed rules, is authorized under Sections (4)(i) and (j), 9, and 303(r) of

the Communications Act of 1934, as amended.²⁴

III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

49. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.²⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²⁶ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.²⁷ 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 SBA.²⁸

50. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.²⁹

51. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards.³⁰ First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.³¹ In addition, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."³² Nationwide, as of 2007, there were approximately 1,621,315 small organizations.³³ Finally, the term "small governmental

jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."³⁴ Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States.³⁵ We estimate that, of this total, as many as 88,506 entities may qualify as "small governmental jurisdictions."³⁶ Thus, we estimate that most governmental jurisdictions are small.

52. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁷ Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.³⁸ Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than

²⁴ 5 U.S.C. 601(5).

²⁵ U.S. Census Bureau, Statistical Abstract of the United States: 2011, Table 427 (2007)

²⁶ The 2007 U.S. Census data for small governmental organizations indicate that there were 89,476 "Local Governments" in 2007. (U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2011, Table 428.) The criterion by which the size of such local governments is determined to be small is a population of 50,000. However, since the Census Bureau does not specifically apply that criterion, it cannot be determined with precision how many of such local governmental organizations is small. Nonetheless, the inference seems reasonable that a substantial number of these governmental organizations has a population of less than 50,000. To look at Table 428 in conjunction with a related set of data in Table 429 in the Census's Statistical Abstract of the U.S., that inference is further supported by the fact that in both Tables, many entities that may well be small are included in the 89,476 local governmental organizations, e.g. county, municipal, township and town, school district and special district entities. Measured by a criterion of a population of 50,000 many specific sub-entities in this category seem more likely than larger county-level governmental organizations to have small populations. Accordingly, of the 89,476 small governmental organizations identified in the 2007 Census, the Commission estimates that a substantial majority is small.

²⁷ 13 CFR 121.201, NAICS code 517110.

²⁸ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) ("*Trends in Telephone Service*").

²⁹ 47 U.S.C. 154(i) and (j), 159, and 303(r).

³⁰ 5 U.S.C. 603(b)(3).

³¹ 5 U.S.C. 601(6).

³² 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*."

³³ 15 U.S.C. 632.

³⁴ See SBA, Office of Advocacy, "Frequently Asked Questions," <http://web.sba.gov/faqs> (accessed Jan. 2009).

³⁵ See 5 U.S.C. 601(3)–(6).

³⁶ See SBA, Office of Advocacy, "Frequently Asked Questions," web.sba.gov/faqs (last visited May 6, 2011; figures are from 2009).

³⁷ 5 U.S.C. 601(4).

³⁸ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2010).

1,500 employees.³⁹ Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the NPRM. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small providers.⁴⁰

53. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴¹ Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities.⁴² According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.⁴³ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.⁴⁴ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.⁴⁵ In addition, 72 carriers have reported that they are Other Local Service Providers.⁴⁶ Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.⁴⁷ Consequently, the Commission estimates that most providers of competitive local exchange

service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the NPRM.

54. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁸ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000.⁴⁹ Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.⁵⁰ Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.⁵¹ Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to this NPRM.

55. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵² Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000.⁵³ Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data,⁵⁴ 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed rules.

56. *Payphone Service Providers (PSPs).* Neither the Commission nor the

SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁵ Census Bureau data for 2007 shows that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these PSPs can be considered small entities.⁵⁶ According to Commission data,⁵⁷ 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

57. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁸ Census Bureau data for 2007 shows that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities.⁵⁹ According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.⁶⁰ Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.⁶¹ Consequently, the

³⁹ See *id.*

⁴⁰ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en.

⁴¹ 13 CFR 121.201, NAICS code 517110.

⁴² See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en.

⁴³ See *Trends in Telephone Service*, at Table 5.3.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ 13 CFR 121.201, NAICS code 517911.

⁴⁹ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=800&-ds_name=EC0751SSSZ5&-lang=en.

⁵⁰ See *Trends in Telephone Service*, at Table 5.3.

⁵¹ *Id.*

⁵² 13 CFR 121.201, NAICS code 517911.

⁵³ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=800&-ds_name=EC0751SSSZ5&-lang=en.

⁵⁴ *Trends in Telephone Service*, at Table 5.3.

⁵⁵ 13 CFR 121.201, NAICS code 517110.

⁵⁶ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en.

⁵⁷ *Trends in Telephone Service*, at table 5.3.

⁵⁸ 13 CFR 121.201, NAICS code 517110.

⁵⁹ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en.

⁶⁰ See *Trends in Telephone Service*, at Table 5.3.

⁶¹ *Id.*

Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

58. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶² Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities.⁶³ According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees.⁶⁴ Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed rules.

59. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶⁵ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000.⁶⁶ Thus under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.⁶⁷ Of these, all 193 have 1,500 or fewer employees and none have more than 1,500 employees.⁶⁸ Consequently, the

Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to this NPRM.

60. *800 and 800-Like Service Subscribers*.⁶⁹ Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (“toll free”) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁷⁰ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000.⁷¹ Thus under this category and the associated small business size standard, the majority of resellers in this classification can be considered small entities. To focus specifically on the number of subscribers than on those firms which make subscription service available, the most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.⁷² According to our data for September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,888,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,888,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

61. *Satellite Telecommunications Providers*. Two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA

rules.⁷³ The second has a size standard of \$25 million or less in annual receipts.⁷⁴

62. The category of Satellite Telecommunications “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁷⁵ Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year.⁷⁶ Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.⁷⁷ Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

63. The second category, *i.e.* “All Other Telecommunications” comprises “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”⁷⁸ For this category, Census Bureau data for 2007 shows that there were a total of 2,383 firms that operated for the entire year.⁷⁹ Of this total, 2,347 firms had annual receipts of under \$25 million and 12 firms had annual receipts of \$25 million to \$49,999,999.⁸⁰ Consequently, the Commission estimates that the majority

⁷³ 13 CFR 121.201, NAICS code 517410.

⁷⁴ 13 CFR 121.201, NAICS code 517919.

⁷⁵ U.S. Census Bureau, 2007 NAICS Definitions, 517410 Satellite Telecommunications.

⁷⁶ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=900&-ds_name=EC0751SSSZ4&-lang=en.

⁷⁷ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=900&-ds_name=EC0751SSSZ4&-lang=en.

⁷⁸ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search>.

⁷⁹ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=900&-ds_name=EC0751SSSZ4&-lang=en.

⁸⁰ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=900&-ds_name=EC0751SSSZ4&-lang=en.

⁶² 13 CFR 121.201, NAICS code 517110.

⁶³ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en.

⁶⁴ *Trends in Telephone Service*, at Table 5.3.

⁶⁵ 13 CFR 121.201, NAICS code 517911.

⁶⁶ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=800&-ds_name=EC0751SSSZ5&-lang=en.

⁶⁷ See *Trends in Telephone Service*, at Table 5.3.

⁶⁸ *Id.*

⁶⁹ We include all toll-free number subscribers in this category, including those for 888 numbers.

⁷⁰ 13 CFR 121.201, NAICS code 517911.

⁷¹ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=800&-ds_name=EC0751SSSZ5&-lang=en.

⁷² *Trends in Telephone Service*, at Tables 18.4, 18.5, 18.6, 18.7.

of All Other Telecommunications firms are small entities that might be affected by our action.

64. *Wireless Telecommunications Carriers (except satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.⁸¹ The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees.⁸² Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁸³ For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.⁸⁴ Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1,000 employees or more.⁸⁵ Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.⁸⁶

65. *Licenses Assigned by Auctions*. Initially, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

66. *Paging Services*. Neither the SBA nor the FCC has developed a definition applicable exclusively to paging

services. However, a variety of paging services is now categorized under Wireless Telecommunications Carriers (except satellite).⁸⁷ This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. Illustrative examples in the paging context include paging services, except satellite; two-way paging communications carriers, except satellite; and radio paging services communications carriers. The SBA has deemed a paging service in this category to be small if it has 1,500 or fewer employees.⁸⁸ For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.⁸⁹ Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1,000 employees or more.⁹⁰ Thus under this category and the associated small business size standard, the Commission estimates that the majority of paging services in the category of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.⁹¹

67. In addition, in the Paging Second Report and Order, the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits.⁹² A small business is an entity that, together with its affiliates and controlling principals,

has average gross revenues not exceeding \$15 million for the preceding three years.⁹³ The SBA has approved this definition.⁹⁴ An initial auction of Metropolitan Economic Area (“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.⁹⁵ Fifty-seven companies claiming small business status won 440 licenses.⁹⁶ A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.⁹⁷ One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.⁹⁸ A fourth auction of 9,603 lower and upper band paging licenses was held in the year 2010. 29 bidders claiming small or very small business status won 3,016 licenses.

68. *2.3 GHz Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (“WCS”) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.⁹⁹ The SBA approved these definitions.¹⁰⁰ The Commission conducted an auction of geographic area licenses in the WCS service in 1997. In the auction, seven bidders that qualified as very small business entities won 31

⁸¹ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2007%20NAICS%20Search>.

⁸² 13 CFR 121.201, NAICS code 517210.

⁸³ 13 CFR 121.201, NAICS code 517210. The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

⁸⁴ U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210” (issued Nov. 2010).

⁸⁵ *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “100 employees or more.”

⁸⁶ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en.

⁸⁷ U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

⁸⁸ U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”.

⁸⁹ U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210” (issued Nov. 2010).

⁹⁰ *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “100 employees or more.”

⁹¹ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en.

⁹² *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, Second Report and Order, 12 FCC Rcd 2732, 2811–2812, paras. 178–181 (“Paging Second Report and Order”); see also *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085–10088, paras. 98–107 (1999).

⁹³ *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

⁹⁴ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau (“WTB”), FCC (Dec. 2, 1998) (“*Alvarez Letter 1998*”).

⁹⁵ See “929 and 931 MHz Paging Auction Closes,” Public Notice, 15 FCC Rcd 4858 (WTB 2000).

⁹⁶ See *id.*

⁹⁷ See “Lower and Upper Paging Band Auction Closes,” Public Notice, 16 FCC Rcd 21821 (WTB 2002).

⁹⁸ See “Lower and Upper Paging Bands Auction Closes,” Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

⁹⁹ *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

¹⁰⁰ See *Alvarez Letter 1998*.

licenses, and one bidder that qualified as a small business entity won a license.

69. *1670–1675 MHz Services.* This service can be used for fixed and mobile uses, except aeronautical mobile.¹⁰¹ An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a “small business” as an entity with attributable average annual gross revenues of not more than \$40 million for the preceding three years, which would thus be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a “very small business” as an entity with attributable average annual gross revenues of not more than \$15 million for the preceding three years, which would thus be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. The winning bidder was not a small entity.

70. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).¹⁰² Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.¹⁰³ Census data for 2007 shows that there were 1,383 firms that operated that year.¹⁰⁴ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. According to Trends in Telephone Service data, 434 carriers reported that they were engaged in wireless telephony.¹⁰⁵ Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.¹⁰⁶ Therefore, approximately half of these entities can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR)

Telephony services.¹⁰⁷ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.¹⁰⁸ Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

71. *Broadband Personal Communications Service. Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a “small business” for C- and F-Block licenses as an entity that has average gross revenues of \$40 million or less in the three previous years.¹⁰⁹ For F-Block licenses, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three years.¹¹⁰ These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.¹¹¹ No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small and very small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks.¹¹² On April 15, 1999, the Commission completed the re-auction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22.¹¹³ Of the 57 winning

bidders in that auction, 48 claimed small business status and won 277 licenses.

72. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status.¹¹⁴ Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses.¹¹⁵ On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71.¹¹⁶ Of the 14 winning bidders in that auction, six claimed small business status and won 18 licenses.¹¹⁷ On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78.¹¹⁸ Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.¹¹⁹

73. *Advanced Wireless Services.* In 2006, the Commission conducted its first auction of Advanced Wireless Services licenses in the 1710–1755 MHz and 2110–2155 MHz bands (“AWS–1”), designated as Auction 66.¹²⁰ For the AWS–1 bands, the Commission has defined a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15

¹⁰⁷ See *Trends in Telephone Service*, at Table 5.3.

¹⁰⁸ See *id.*

¹⁰⁹ See *Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule*, WT Docket No. 96–59, GN Docket No. 90–314, Report and Order, 11 FCC Rcd 7824, 7850–52 paras. 57–60 (1996) (“*PCS Report and Order*”); see also 47 CFR 24.720(b).

¹¹⁰ See *PCS Report and Order*, 11 FCC Rcd at 7852 para. 60.

¹¹¹ See Alvarez Letter 1998.

¹¹² See *Broadband PCS, D, E and F Block Auction Closes*, Public Notice, Doc. No. 89838 (released Jan. 14, 1997).

¹¹³ See *C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (WTB 1999). Before Auction No. 22, the Commission established a very small standard for the C Block to match the standard used for F Block. *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT

Docket No. 97–82, Fourth Report and Order, 13 FCC Rcd 15743, 15768 para. 46 (1998).

¹¹⁴ See *C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (2001).

¹¹⁵ See *Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (2005).

¹¹⁶ See *Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (2007).

¹¹⁷ *Id.*

¹¹⁸ See *Auction of AWS–1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78*, Public Notice, 23 FCC Rcd 12749 (WTB 2008).

¹¹⁹ *Id.*

¹²⁰ See *Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66*, AU Docket No. 06–30, *Public Notice*, 21 FCC Rcd 4562 (2006) (“*Auction 66 Procedures Public Notice*”);

¹⁰¹ 47 CFR 2.106; see generally 47 CFR 27.1–.70.

¹⁰² 13 CFR 121.201, NAICS code 517210.

¹⁰³ *Id.*

¹⁰⁴ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en.

¹⁰⁵ *Trends in Telephone Service*, at Table 5.3.

¹⁰⁶ *Id.*

million.¹²¹ In 2006, the Commission conducted its first auction of AWS-1 licenses.¹²² In that initial AWS-1 auction, 31 winning bidders identified themselves as very small businesses won 142 licenses.¹²³ Twenty-six of the winning bidders identified themselves as small businesses and won 73 licenses.¹²⁴ In a subsequent 2008 auction, the Commission offered 35 AWS-1 licenses.¹²⁵ Four winning bidders identified themselves as very small businesses, and three of the winning bidders identifying themselves as a small businesses won five AWS-1 licenses.¹²⁶

74. Narrowband Personal Communications Services. In 1994, the Commission conducted two auctions of Narrowband PCS licenses. For these auctions, the Commission defined a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million.¹²⁷ Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.¹²⁸ To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and*

Order.¹²⁹ A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.¹³⁰ A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.¹³¹ The SBA has approved these small business size standards.¹³² A third auction of Narrowband PCS licenses was conducted in 2001. In that auction, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.¹³³ Three of the winning bidders claimed status as a small or very small entity and won 311 licenses.

75. Lower 700 MHz Band Licenses. The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.¹³⁴ The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.¹³⁵ A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.¹³⁶ Additionally, the Lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (“MSA/RSA”) licenses—“entrepreneur”—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.¹³⁷ The SBA approved these small size standards.¹³⁸ An auction of 740 licenses was conducted in 2002 (one license in

each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business, or entrepreneur status and won a total of 329 licenses.¹³⁹ A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses.¹⁴⁰ Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.¹⁴¹ In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). All three winning bidders claimed small business status.

76. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*.¹⁴² An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008.¹⁴³ Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven

¹²¹ See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Report and Order*, 18 FCC Rcd 25,162, App. B (2003), modified by Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Order on Reconsideration*, 20 FCC Rcd 14,058, App. C (2005).

¹²² See *Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66*, AU Docket No. 06-30, Public Notice, 21 FCC Rcd 4562 (2006) (“*Auction 66 Procedures Public Notice*”).

¹²³ See *Auction of Advanced Wireless Services Licenses Closes; Winning Bidders Announced for Auction No. 66*, Public Notice, 21 FCC Rcd 10,521 (2006) (“*Auction 66 Closing Public Notice*”).

¹²⁴ See *id.*

¹²⁵ See *AWS-1 and Broadband PCS Procedures Public Notice*, 23 FCC Rcd at 7499. Auction 78 also included an auction of broadband PCS licenses.

¹²⁶ See *Auction of AWS-1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period*, Public Notice, 23 FCC Rcd 12,749 (2008).

¹²⁷ *Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS*, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

¹²⁸ See “Announcing the High Bidders in the Auction of Ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674,” Public Notice, PNWL 94-004 (released Aug. 2, 1994); “Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787,” Public Notice, PNWL 94-27 (released Nov. 9, 1994).

¹²⁹ *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000) (“*Narrowband PCS Second Report and Order*”).

¹³⁰ *Narrowband PCS Second Report and Order*, 15 FCC Rcd at 10476, para. 40.

¹³¹ *Id.*

¹³² See *Alvarez Letter 1998*.

¹³³ See “*Narrowband PCS Auction Closes*,” Public Notice, 16 FCC Rcd 18663 (WTB 2001).

¹³⁴ See *Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)*, Report and Order, 17 FCC Rcd 1022 (2002) (“*Channels 52–59 Report and Order*”).

¹³⁵ See *Channels 52–59 Report and Order*, 17 FCC Rcd at 1087–88, para. 172.

¹³⁶ See *id.*

¹³⁷ See *id.*, 17 FCC Rcd at 1088, para. 173.

¹³⁸ See Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) (“*Alvarez Letter 1999*”).

¹³⁹ See “*Lower 700 MHz Band Auction Closes*,” Public Notice, 17 FCC Rcd 17272 (WTB 2002).

¹⁴⁰ See *Lower 700 MHz Band Auction Closes*, Public Notice, 18 FCC Rcd 11873 (WTB 2003).

¹⁴¹ See *id.*

¹⁴² Service Rules for the 698–746, 747–762 and 777–792 MHz Band, WT Docket No. 06–150, *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94–102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephone, WT Docket No. 01–309, Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket No. 03–264, *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 06–169, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06–229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket No. 96–86, Second Report and Order, 22 FCC Rcd 15289 (2007) (“*700 MHz Second Report and Order*”).

¹⁴³ See *Auction of 700 MHz Band Licenses Closes*, Public Notice, 23 FCC Rcd 4572 (WTB 2008).

winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

77. *Upper 700 MHz Band Licenses.* In the 700 MHz Second Report and Order, the Commission revised its rules regarding Upper 700 MHz licenses.¹⁴⁴ On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block.¹⁴⁵ The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years) and winning five licenses.

78. *700 MHz Guard Band Licenses.* In 2000, the Commission adopted the 700 MHz Guard Band Report and Order, in which it established rules for the A and B block licenses in the Upper 700 MHz band, including size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits.¹⁴⁶ A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.¹⁴⁷ Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.¹⁴⁸ SBA approval of these definitions is not required.¹⁴⁹ An auction of these licenses was conducted in 2000.¹⁵⁰ Of the 104 licenses auctioned, 96 licenses were won by nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses was held in 2001. All eight of the licenses auctioned were

sold to three bidders. One of these bidders was a small business that won a total of two licenses.¹⁵¹

79. *Specialized Mobile Radio.* The Commission adopted small business size standards for the purpose of determining eligibility for bidding credits in auctions of Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands. The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.¹⁵² The Commission defined a “very small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$3 million for the preceding three years.¹⁵³ The SBA has approved these small business size standards for both the 800 MHz and 900 MHz SMR Service.¹⁵⁴ The first 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 licenses in the 900 MHz SMR band. In 2004, the Commission held a second auction of 900 MHz SMR licenses and three winning bidders identifying themselves as very small businesses won 7 licenses.¹⁵⁵ The auction of 800 MHz SMR licenses for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small or very small businesses under the \$15 million size standard won 38 licenses for the upper 200 channels.¹⁵⁶ A second auction of 800 MHz SMR licenses was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.¹⁵⁷

80. The auction of the 1,053 800 MHz SMR licenses for the General Category channels was conducted in 2000. Eleven bidders who won 108 licenses for the General Category channels in the 800 MHz SMR band qualified as small or

very small businesses.¹⁵⁸ In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.¹⁵⁹ Of the 22 winning bidders, 19 claimed small or very small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed to be small businesses.

81. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues not exceeding \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees.¹⁶⁰ We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

82. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable. The SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.¹⁶¹ For this service, the SBA uses the category of Wireless Telecommunications Carriers (except Satellite). Census data for 2007, which supersede data contained in the 2002

¹⁴⁴ 700 MHz Second Report and Order, 22 FCC Rcd 15289.

¹⁴⁵ See *Auction of 700 MHz Band Licenses Closes*, Public Notice, 23 FCC Rcd 4572 (WTB 2008).

¹⁴⁶ See *Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, Second Report and Order, 15 FCC Rcd 5299 (2000) (“700 MHz Guard Band Report and Order”).

¹⁴⁷ See 700 MHz Guard Band Report and Order, 15 FCC Rcd at 5343, para. 108.

¹⁴⁸ See *id.*

¹⁴⁹ See *id.*, 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

¹⁵⁰ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 18026 (2000).

¹⁵¹ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

¹⁵² 47 CFR 90.810, 90.814(b), 90.912.

¹⁵³ 47 CFR 90.810, 90.814(b), 90.912.

¹⁵⁴ See *Alvarez Letter* 1999.

¹⁵⁵ See 900 MHz Specialized Mobile Radio Service Spectrum Auction Closes: Winning Bidders Announced,” *Public Notice*, 19 FCC Rcd. 3921 (WTB 2004).

¹⁵⁶ See “Correction to Public Notice DA 96–586 ‘FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,’” *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

¹⁵⁷ See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

¹⁵⁸ See “800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 17162 (2000).

¹⁵⁹ See, “800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 1736 (2000).

¹⁶⁰ See generally 13 CFR 121.201, NAICS code 517210.

¹⁶¹ 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

Census, show that there were 1,383 firms that operated that year.¹⁶² Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

83. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service licenses are assigned by auction, where mutually exclusive applications are accepted. In the *220 MHz Third Report and Order*, the Commission adopted a small business size standard for defining “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits.¹⁶³ This small business standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.¹⁶⁴ A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.¹⁶⁵ The SBA has approved these small size standards.¹⁶⁶ Auctions of Phase II licenses commenced on and closed in 1998.¹⁶⁷ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.¹⁶⁸ Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158

licenses.¹⁶⁹ A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.¹⁷⁰ In 2007, the Commission conducted a fourth auction of the 220 MHz licenses, designated as Auction 72.¹⁷¹ Auction 72, which offered 94 Phase II 220 MHz Service licenses, concluded in 2007.¹⁷² In this auction, five winning bidders won a total of 76 licenses. Two winning bidders identified themselves as very small businesses won 56 of the 76 licenses. One of the winning bidders that identified themselves as a small business won 5 of the 76 licenses won.

84. *Private Land Mobile Radio (“PLMR”).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee’s primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.¹⁷³ The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.¹⁷⁴

85. As of March 2010, there were 424,162 PLMR licensees operating

921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

86. *Fixed Microwave Services.*

Microwave services include common carrier,¹⁷⁵ private-operational fixed,¹⁷⁶ and broadcast auxiliary radio services.¹⁷⁷ They also include the Local Multipoint Distribution Service (“LMDS”),¹⁷⁸ the Digital Electronic Message Service (“DEMS”),¹⁷⁹ and the 24 GHz Service,¹⁸⁰ where licensees can choose between common carrier and non-common carrier status.¹⁸¹ The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, the Commission will use the SBA’s definition applicable to Wireless Telecommunications Carriers (except satellite)—i.e., an entity with no more than 1,500 persons is considered small.¹⁸² For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year.¹⁸³ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

87. *39 GHz Service.* The Commission adopted small business size standards for 39 GHz licenses. A “small business”

¹⁶² U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en.

¹⁶³ *Amendment of Part 90 of the Commission’s Rules to Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service*, Third Report and Order, 12 FCC Rcd 10943, 11068–70 paras. 291–295 (1997).

¹⁶⁴ *Id.* at 11068 para. 291.

¹⁶⁵ *Id.*

¹⁶⁶ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998 (*Alvarez to Phythyon Letter 1998*).

¹⁶⁷ See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (WTB 1998).

¹⁶⁸ See *FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made*, Public Notice, 14 FCC Rcd 1085 (WTB 1999).

¹⁶⁹ See *Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (WTB 1999).

¹⁷⁰ See *Multi-Radio Service Auction Closes*, Public Notice, 17 FCC Rcd 1446 (WTB 2002).

¹⁷¹ See “Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 72,” Public Notice, 22 FCC Rcd 3404 (2007).

¹⁷² See *Auction of Phase II 220 MHz Service Spectrum Licenses Closes, Winning Bidders Announced for Auction 72, Down Payments due July 18, 2007, FCC Forms 601 and 602 due July 18, 2007, Final Payments due August 1, 2007, Ten-Day Petition to Deny Period*, Public Notice, 22 FCC Rcd 11573 (2007).

¹⁷³ See 13 CFR 121.201, NAICS code 517210.

¹⁷⁴ See generally 13 CFR 121.201.

¹⁷⁵ See 47 CFR Part 101, subparts C and I.

¹⁷⁶ See *id.* subparts C and H.

¹⁷⁷ Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission’s rules. See 47 CFR part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

¹⁷⁸ See 47 CFR part 101, subpart L.

¹⁷⁹ See *id.* subpart G.

¹⁸⁰ See *id.*

¹⁸¹ See 47 CFR 101.533, 101.1017.

¹⁸² 13 CFR 121.201, NAICS code 517210.

¹⁸³ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en.

is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million in the preceding three years.¹⁸⁴ A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues of not more than \$15 million for the preceding three years.¹⁸⁵ The SBA has approved these small business size standards.¹⁸⁶ In 2000, the Commission conducted an auction of 2,173 39 GHz licenses. A total of 18 bidders who claimed small or very small business status won 849 licenses.

88. *Local Multipoint Distribution Service*. Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.¹⁸⁷ The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous years.¹⁸⁸ An additional small business size standard for “very small business” was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three years.¹⁸⁹ The SBA has approved these small business size standards in the context of LMDS auctions.¹⁹⁰ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

89. *218–219 MHz Service*. The first auction of 218–219 MHz Service

(previously referred to as the Interactive and Video Data Service or IVDS) licenses resulted in 170 entities winning licenses for 594 Metropolitan Statistical Areas (“MSAs”).¹⁹¹ Of the 594 licenses, 557 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.¹⁹² In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, the Commission revised its small business size standards for the 218–219 MHz Service and defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding \$15 million for the preceding three years.¹⁹³ The Commission defined a “very small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding \$3 million for the preceding three years.¹⁹⁴ The SBA has approved these definitions.¹⁹⁵

90. *Location and Monitoring Service (“LMS”)*. Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For auctions of LMS licenses, the Commission has defined a “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.¹⁹⁶ A “very small business” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$3 million.¹⁹⁷ These

definitions have been approved by the SBA.¹⁹⁸ An auction of LMS licenses was conducted in 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

91. *Rural Radiotelephone Service*. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.¹⁹⁹ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (“BETRS”).²⁰⁰ For purposes of its analysis of the Rural Radiotelephone Service, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except satellite),” which is 1,500 or fewer employees.²⁰¹ Census data for 2007 shows that there were 1,383 firms that operated that year.²⁰² Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms in the Rural Radiotelephone Service can be considered small.

92. *Air-Ground Radiotelephone Service*.²⁰³ The Commission has previously used the SBA’s small business definition applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons.²⁰⁴ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$40 million.²⁰⁵ A “very

¹⁸⁴ See *Amendment of the Commission’s Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands*, ET Docket No. 95–183, Report and Order, 12 FCC Rcd 18600 (1997).

¹⁸⁵ *Id.*

¹⁸⁶ See Letter from Aida Alvarez, Administrator, SBA, to Kathleen O’Brien Ham, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb. 4, 1998); see Letter from Hector Barreto, Administrator, SBA, to Margaret Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Jan. 18, 2002).

¹⁸⁷ See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission’s Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *CC Docket No. 92–297, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making*, 12 FCC Rcd 12545, 12689–90, para. 348 (1997) (“*LMDS Second Report and Order*”).

¹⁸⁸ See *LMDS Second Report and Order*, 12 FCC Rcd at 12689–90, para. 348.

¹⁸⁹ See *id.*

¹⁹⁰ See Alvarez to Phythyon Letter 1998.

¹⁹¹ See “*Interactive Video and Data Service (IVDS) Applications Accepted for Filing*,” Public Notice, 9 FCC Rcd 6227 (1994).

¹⁹² *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

¹⁹³ *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218–219 MHz Service*, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

¹⁹⁴ *Id.*

¹⁹⁵ See Alvarez to Phythyon Letter 1998.

¹⁹⁶ *Amendment of Part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Second Report and Order, 13 FCC Rcd 15182, 15192, para. 20 (1998) (“*Automatic Vehicle Monitoring Systems Second Report and Order*”); see also 47 CFR 90.1103.

¹⁹⁷ *Automatic Vehicle Monitoring Systems Second Report and Order*, 13 FCC Rcd at 15192, para. 20; see also 47 CFR 90.1103.

¹⁹⁸ See Alvarez Letter 1998.

¹⁹⁹ The service is defined in section 22.99 of the Commission’s rules, 47 CFR 22.99.

²⁰⁰ BETRS is defined in sections 22.757 and 22.759 of the Commission’s rules, 47 CFR 22.757 and 22.759.

²⁰¹ 13 CFR 121.201, NAICS code 517210.

²⁰² U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en.

²⁰³ The service is defined in section 22.99 of the Commission’s rules, 47 CFR 22.99.

²⁰⁴ 13 CFR 121.201, NAICS codes 517210.

²⁰⁵ *Amendment of Part 22 of the Commission’s Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission’s Rules, Amendment of Parts 1 and 22 of the Commission’s Rules to Adopt Competitive*

small business” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.²⁰⁶ These definitions were approved by the SBA.²⁰⁷ In 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction 65). The auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

93. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (“VHF”) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except satellite),” which is 1,500 or fewer employees.²⁰⁸ Census data for 2007 shows that there were 1,383 firms that operated that year.²⁰⁹ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

94. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.²¹⁰ There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA’s small business size standard for the category of Wireless

Telecommunications Carriers (except Satellite). Under that standard.²¹¹ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.²¹² Census data for 2007 shows that there were 1,383 firms that operated that year.²¹³ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

95. *Multiple Address Systems (“MAS”).* Entities using MAS spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. The Commission defines a small business for MAS licenses as an entity that has average gross revenues of less than \$15 million in the preceding three years.²¹⁴ A very small business is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$3 million for the preceding three years.²¹⁵ The SBA has approved these definitions.²¹⁶ The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission’s licensing database indicates that, as of March 5, 2010, there were over 11,500 MAS station authorizations. In 2001, an auction of 5,104 MAS licenses in 176 EAs was conducted.²¹⁷ Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

96. With respect to entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the small business size standard developed by the SBA would be more appropriate. The applicable size standard in this instance appears to be that of Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.²¹⁸ The Commission’s licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

97. *1.4 GHz Band Licensees.* The Commission conducted an auction of 64 1.4 GHz band licenses in the paired 1392–1395 MHz and 1432–1435 MHz bands, and in the unpaired 1390–1392 MHz band in 2007.²¹⁹ For these licenses, the Commission defined “small business” as an entity that, together with its affiliates and controlling interests, had average gross revenues not exceeding \$40 million for the preceding three years, and a “very small business” as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years.²²⁰ Neither of the two winning bidders claimed small business status.²²¹

98. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category “Wireless Telecommunications Carriers (except satellite),” which is 1,500 or fewer employees.²²² To gauge small business prevalence for these cable services we must, however, use the most

Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service, WT Docket Nos. 03–103 and 05–42, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, paras. 28–42 (2005).

²⁰⁶ *Id.*

²⁰⁷ See Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, WTB, FCC (Sept. 19, 2005).

²⁰⁸ 13 CFR 121.201, NAICS code 517210.

²⁰⁹ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en.

²¹⁰ This service is governed by subpart I of part 22 of the Commission’s rules. See 47 CFR 22.1001–22.1037.

²¹¹ 13 CFR 121.201, NAICS code 517210.

²¹² *Id.*

²¹³ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en.

²¹⁴ See Amendment of the Commission’s Rules Regarding Multiple Address Systems, Report and Order, 15 FCC Rcd 11956, 12008, para. 123 (2000).

²¹⁵ *Id.*

²¹⁶ See Alvarez Letter 1999.

²¹⁷ See “Multiple Address Systems Spectrum Auction Closes,” Public Notice, 16 FCC Rcd 21011 (2001).

²¹⁸ See 13 CFR 121.201, NAICS code 517210.

²¹⁹ See “Auction of 1.4 GHz Band Licenses Scheduled for February 7, 2007,” Public Notice, 21 FCC Rcd 12393 (WTB 2006); “Auction of 1.4 GHz Band Licenses Closes; Winning Bidders Announced for Auction No. 69,” Public Notice, 22 FCC Rcd 4714 (2007) (“Auction No. 69 Closing PN”).

²²⁰ Auction No. 69 Closing PN, Attachment C.

²²¹ See Auction No. 69 Closing PN.

²²² 13 CFR 121.201, NAICS code 517210.

current census data. Census data for 2007 shows that there were 1,383 firms that operated that year.²²³ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications "firms" does not track the number of "licenses". The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent²²⁴ and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

99. *Future 24 GHz Licensees.* With respect to new applicants for licenses in the 24 GHz band, for the purpose of determining eligibility for bidding credits, the Commission established three small business definitions. An "entrepreneur" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$40 million.²²⁵ A "small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$15 million.²²⁶ A "very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.²²⁷ The SBA has approved these small business size standards.²²⁸ In a 2004 auction of 24 GHz licenses, three

winning bidders won seven licenses.²²⁹ Two of the winning bidders were very small businesses that won five licenses.

100. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service ("MDS") and Multichannel Multipoint Distribution Service ("MMDS") systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") (previously referred to as the Instructional Television Fixed Service ("ITFS")).²³⁰ In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three years.²³¹ The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.²³² After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78

licenses in the BRS areas.²³³ The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid.²³⁴ Auction 86 concluded in 2009 with the sale of 61 licenses.²³⁵ Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

101. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.²³⁶ Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of

²²³ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en.

²²⁴ Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

²²⁵ *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz*, Report and Order, 15 FCC Rcd 16934, 16967 para 77 (2000) ("24 GHz Report and Order"); see also 47 CFR 101.538(a)(3).

²²⁶ 24 GHz Report and Order, 15 FCC Rcd at 16967 para. 77; see also 47 CFR 101.538(a)(2).

²²⁷ 24 GHz Report and Order, 15 FCC Rcd at 16967 para. 77; see also 47 CFR 101.538(a)(1).

²²⁸ See Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

²²⁹ *Auction of 24 GHz Service Spectrum Auction Closes, Winning Bidders Announced for Auction 56, Down Payments Due August 16, 2004, Final Payments Due August 30, 2004, Ten-Day Petition to Deny Period*, Public Notice, 19 FCC Rcd 14738 (2004).

²³⁰ *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, MM Docket No. 94–131, PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 9593 para. 7 (1995).

²³¹ 47 CFR 21.961(b)(1).

²³² 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1500 or fewer employees.

²³³ *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277 (2009).

²³⁴ *Id.* at 8296.

²³⁵ *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (2009).

²³⁶ The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on EBS licensees.

technologies.”²³⁷ For these services, the Commission uses the SBA small business size standard for the category “Wireless Telecommunications Carriers (except satellite),” which is 1,500 or fewer employees.²³⁸ To gauge small business prevalence for these cable services we must, however, use the most current census data. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.²³⁹ Of this total, 939 firms employed 999 or fewer employees, and 16 firms employed 1,000 employees or more.²⁴⁰ Thus, the majority of these firms can be considered small.

102. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.”²⁴¹ The SBA has created the following small business size standard for Television Broadcasting firms: those having \$14 million or less in annual receipts.²⁴² The Commission has estimated the number of licensed commercial television stations to be 1,387.²⁴³ In addition, according to Commission staff review of the BIA Advisory Services, LLC’s *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less.²⁴⁴ We therefore estimate that the majority of commercial television broadcasters are small entities.

103. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations²⁴⁵ must be included. Our

estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

104. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.²⁴⁶ These stations are non-profit, and therefore considered to be small entities.²⁴⁷

105. In addition, there are also 2,528 low power television stations, including Class A stations (LPTV).²⁴⁸ Given the nature of these services, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

106. *Radio Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”²⁴⁹ The SBA has established a small business size standard for this category, which is: such firms having \$7 million or less in annual receipts.²⁵⁰ According to Commission staff review of BIA Advisory Services, LLC’s *Media Access Pro Radio Database* on March 28, 2012, about 10,759 (97%) of 11,102 commercial radio stations had revenues of \$7 million or less. Therefore, the majority of such entities are small entities.

107. We note, however, that in assessing whether a business concern

to control the other or a third party or parties controls or has to power to control both.” 13 CFR 21.103(a)(1).

²⁴⁶ See *FCC News Release*, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012; http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.

²⁴⁷ See generally 5 U.S.C. 601(4), (6).

²⁴⁸ See *FCC News Release*, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012; http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.

²⁴⁹ U.S. Census Bureau, 2007 NAICS Definitions, “515112 Radio Stations”; <http://www.census.gov/naics/2007/def/ND515112.HTM#N515112>.

²⁵⁰ 13 CFR 121.201, NAICS code 515112 (updated for inflation in 2010).

qualifies as small under the above size standard, business affiliations must be included.²⁵¹ In addition, to be determined to be a “small business,” the entity may not be dominant in its field of operation.²⁵² We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

108. *Auxiliary, Special Broadcast and Other Program Distribution Services.*

This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.²⁵³

109. The Commission estimates that there are approximately 6,099 FM translators and boosters.²⁵⁴ The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (\$7.0 million for a radio station or \$14.0 million for a TV station). Furthermore, they do not meet the Small Business Act’s definition of a “small business concern” because they are not independently owned and operated.²⁵⁵

110. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad

²⁵¹ “Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.” 13 CFR 121.103(a)(1) (an SBA regulation).

²⁵² 13 CFR 121.102(b) (an SBA regulation).

²⁵³ 13 CFR 121.201, NAICS codes 515112 and 515120.

²⁵⁴ See *FCC News Release*, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012; http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.

²⁵⁵ See 15 U.S.C. 632.

²³⁷ U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, (partial definition), www.census.gov/naics/2007/def/ND517110.HTM#N517110.

²³⁸ 13 CFR 121.201, NAICS code 517210.

²³⁹ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (issued November 2010).

²⁴⁰ *Id.*

²⁴¹ U.S. Census Bureau, 2007 NAICS Definitions, “515120 Television Broadcasting” (partial definition); <http://www.census.gov/naics/2007/def/ND515120.HTM#N515120>.

²⁴² 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2010).

²⁴³ See *FCC News Release*, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012; http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311837A1.pdf.

²⁴⁴ We recognize that BIA’s estimate differs slightly from the FCC total given *supra*.

²⁴⁵ “[Business concerns] are affiliates of each other when one concern controls or has the power

economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."²⁵⁶ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 1,383 firms that operated that year.²⁵⁷ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

111. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.²⁵⁸ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.²⁵⁹ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.²⁶⁰ Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers.²⁶¹ Thus,

under this second size standard, most cable systems are small.

112. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."²⁶² The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.²⁶³ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.²⁶⁴ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,²⁶⁵ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

113. *Open Video Systems.* Open Video Service (OVS) systems provide subscription services.²⁶⁶ The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.²⁶⁷ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,²⁶⁸ OVS falls within the SBA small business size

standard covering cable services, which is "Wired Telecommunications Carriers."²⁶⁹ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small.²⁷⁰ In addition, we note that the Commission has certified some OVS operators, with some now providing service.²⁷¹ Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises.²⁷² The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service.²⁷³ Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be

²⁵⁶ U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, (partial definition), <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110> (last visited Oct. 21, 2009).

²⁵⁷ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (released Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en.

²⁵⁸ 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

²⁵⁹ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

²⁶⁰ 47 CFR 76.901(c).

²⁶¹ Warren Communications News, *Television & Cable Factbook 2006*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct.

2007). The data do not include 851 systems for which classifying data were not available.

²⁶² 47 U.S.C. 543(m)(2); see 47 CFR 76.901(f) & nn. 1–3.

²⁶³ 47 CFR 76.901(f); see Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

²⁶⁴ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

²⁶⁵ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. See 47 CFR 76.909(b).

²⁶⁶ See 47 U.S.C. 573.

²⁶⁷ 47 U.S.C. 571(a)(3)–(4). See 13th Annual Report, 24 FCC Rcd at 606, para. 135.

²⁶⁸ See 47 U.S.C. 573.

²⁶⁹ U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

²⁷⁰ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en.

²⁷¹ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsr.html>.

²⁷² See 13th Annual Report, 24 FCC Rcd at 606–07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

²⁷³ See <http://www.fcc.gov/mb/ovs/csovsr.html> (current as of February 2007).

affected by the rules and policies adopted herein.

114. *Cable Television Relay Service.* The industry in which Cable Television Relay Services operate comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.²⁷⁴ The category designated by the SBA for this industry is "Wired Telecommunications Carriers."²⁷⁵ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, Census data for 2007 shows 3,188 firms in this category.²⁷⁶ Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. On this basis, the Commission estimates that a substantial majority of the providers of interconnected VoIP, non-interconnected VoIP, or both in this category, are small.²⁷⁷

115. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial

fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defines a very small business as an entity with average annual gross revenues not exceeding \$3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding \$15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding \$40 million for the preceding three years.²⁷⁸ These definitions were approved by the SBA.²⁷⁹ On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.²⁸⁰ Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.²⁸¹

116. *Amateur Radio Service.* These licensees are held by individuals in a noncommercial capacity; these licensees are not small entities.

117. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.²⁸² These services include Citizen Band Radio Service ("CB"), General Mobile Radio

Service ("GMRS"), Radio Control Radio Service ("R/C"), Family Radio Service ("FRS"), Wireless Medical Telemetry Service ("WMTS"), Medical Implant Communications Service ("MICS"), Low Power Radio Service ("LPRS"), and Multi-Use Radio Service ("MURS").²⁸³ There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons.²⁸⁴ Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by our action.

118. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.²⁸⁵

²⁸³ The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by subpart D, subpart A, subpart C, subpart B, subpart H, subpart I, subpart G, and subpart J, respectively, of part 95 of the Commission's rules. See generally 47 CFR part 95.

²⁸⁴ 13 CFR 121.201, NAICS Code 517210.

²⁸⁵ With the exception of the special emergency service, these services are governed by subpart B of part 90 of the Commission's rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed for highway maintenance service to provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service ("EMRS") use

Continued

²⁷⁴ U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

²⁷⁵ 13 CFR 121.201, NAICS code 517110.

²⁷⁶ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en

²⁷⁷ *Id.* As noted in para. 18 above with regard to the distinction between manufacturers of equipment used to provide interconnected VoIP and manufactures of equipment to provide non-interconnected VoIP, our estimates of the number of providers of non-interconnected VoIP (and the number of small entities within that group) are likely overstated because we could not draw in the data a distinction between such providers and those that provide interconnected VoIP. However, in the absence of more accurate data, we present these figures to provide as thorough an analysis of the impact on small entities as we can at this time.

²⁷⁸ Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licenses and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to provide A Fixed Service in the 12.2–12.7 GHz Band, ET Docket No. 98–206, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, para. 252 (2002).

²⁷⁹ See Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb.13, 2002).

²⁸⁰ See "Multichannel Video Distribution and Data Service Auction Closes," Public Notice, 19 FCC Rcd 1834 (2004).

²⁸¹ See "Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63," Public Notice, 20 FCC Rcd 19807 (2005).

²⁸² 47 CFR part 90.

There are a total of approximately 127,540 licensees in these services. Governmental entities²⁸⁶ as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.²⁸⁷

119. *Internet Service Providers. Internet Service Providers, Web Portals and Other Information Services.* In 2007, the SBA recognized two new small business economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals,²⁸⁸ and (2) All Other Information Services.²⁸⁹

120. *Internet Service Providers.* The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,²⁹⁰ which has an SBA small business size standard of 1,500 or fewer employees.²⁹¹ These are also labeled "broadband." The latter are within the category of All Other Telecommunications,²⁹² which has a size standard of annual receipts of \$25 million or less.²⁹³ These are labeled non-broadband.

121. The most current Economic Census data for all such firms are 2007 data, which are detailed specifically for ISPs within the categories above. For the first category, the data show that 396 firms operated for the entire year, of

which 159 had nine or fewer employees.²⁹⁴ For the second category, the data show that 1,682 firms operated for the entire year.²⁹⁵ Of those, 1,675 had annual receipts below \$25 million per year, and an additional two had receipts of between \$25 million and \$49,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

122. *Internet Publishing and Broadcasting and Web Search Portals.* This industry comprises establishments primarily engaged in 1) publishing and/or broadcasting content on the Internet exclusively or 2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as email, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.²⁹⁶ The SBA deems businesses in this industry with 500 or fewer employees small.²⁹⁷ According to Census Bureau data for 2007, there were 2,705 firms that provided one or more of these services for that entire year. Of these, 2,682 operated with less than 500 employees and 13 operated with 999 employees.²⁹⁸ Consequently, we estimate the majority of these firms are small entities that may be affected by our proposed actions.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:

123. This *Notice of Proposed Rulemaking* does not propose any changes to the Commission's current compliance rules, but may include

possible proposed information collection, reporting, and recordkeeping requirements.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

124. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²⁹⁹

125. In Section I of this *NPRM*, we seek comment on whether and how the Commission should adjust the revised cost allocation percentages that would otherwise result from using updated FTE data and implementing the new cost allocation proposals.

126. In particular, as stated *supra* in Section I, our concern with minimizing any adverse economic impact of our proposed rules on small entities is guided by our goals of fairness, administrability, and sustainability. Accordingly, we believe that adjustments to fees paid by fee payors should be consistent with those goals. Specifically, we intend to mitigate any inequities that might result from imposition of substantial fee increases.

127. In keeping with the requirements of the Regulatory Flexibility Act, we have considered certain alternative means of mitigating the effects of fee increases to a particular industry segment. One option is to make all or most fee adjustments at one time. Another option is to provide interim adjustments, by phasing in the new fees over a period of time.

128. On the issue of revisiting the allocation resulting from this rulemaking, the Commission is considering undertaking this reexamination at regular intervals. Alternatively, such reexamination could be undertaken in response to comments by fee payors in the annual regulatory fee collection *NPRM*. Regardless of the method chosen, one underlying concern we have is to mitigate any adverse economic impact on small service providers who are likely least able to

the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

²⁸⁶ 47 CFR 1.1162.

²⁸⁷ 5 U.S.C. 601(5).

²⁸⁸ 13 CFR 121.201, NAICS code 519130 (establishing a \$500,000 revenue ceiling).

²⁸⁹ 13 CFR 121.201, NAICS code 519190 (establishing a \$6.5 million revenue ceiling).

²⁹⁰ U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

²⁹¹ 13 CFR 121.201, NAICS code 517110.

²⁹² U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications," <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

²⁹³ 13 CFR 121.201, NAICS code 517919 (updated for inflation in 2008).

²⁹⁴ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 5171103 (rel. Nov. 19, 2010) (employment size). The data show only two categories within the whole: the categories for 1–4 employees and for 5–9 employees.

²⁹⁵ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 5179191 (rel. Nov. 19, 2010) (receipts size).

²⁹⁶ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=519130&search=2007%20NAICS%20Search>

²⁹⁷ http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.

²⁹⁸ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=1000&-ds_name=EC0751SSSZ5&-lang=en.

²⁹⁹ 5 U.S.C. 603.

absorb unpredictable changes in fees from year to year.

129. In light of our stated goals, the Commission seeks comment on the abovementioned, and any other, means and methods that would minimize any significant economic impact of our proposed rules on small entities.

VII. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

130. None.

VI. Ordering Clauses

41. Accordingly, *it is ordered* that, pursuant to Sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this Notice of Proposed Rulemaking *is hereby adopted*.

42. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of

this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012-20203 Filed 8-16-12; 8:45 am]

BILLING CODE 6712-01-P

Notices

Federal Register

Vol. 77, No. 160

Friday, August 17, 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.

DEPARTMENT OF AGRICULTURE

Notice of Request for Extension of a Currently Approved Information Collection; USDA Registration Form To Request Electronic Access Code

AGENCY: Office of the Chief Information Officer, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), this notice announces and requests comments on the intention of the Office of the Chief Information Officer (OCIO) to request approval for the continuation of and changes to an information collection necessary to allow USDA customers to securely and confidently share data and receive services electronically. Authority for obtaining information from customers is included in the Freedom to E-File Act (7 U.S.C. 7031–7035), the Electronic Signatures in Global and National Commerce Act (E-SIGN) (15 U.S.C. 7001–7031), and the E-Government Act of 2002 (44 U.S.C. 3601–3606; 3541–3549). Customer information is collected through the USDA eAuthentication Service (eAuth), located at <http://www.eauth.egov.usda.gov>. The USDA eAuth service provides the public and government businesses with a single sign-on capability for USDA applications, management of user credentials, and verification of identity, authorization, and electronic signatures. USDA's eAuth service obtains customer information through an electronic self registration process provided through the eAuth Web site. This voluntary on-line self registration process enables USDA customers, as well as employees, to obtain accounts as authorized users that will provide single sign-on capability to access USDA Web applications and services via the Internet.

DATES: Comments on this notice must be received by October 16, 2012 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this information collection to Pam Weber, 2150 Centre Avenue, Building A—Suite 205B, Fort Collins, Colorado 80526. Fax comments should be sent to the attention of Pam Weber at fax number (970) 295–5528.

FOR FURTHER INFORMATION CONTACT: Pam Weber by telephone at (970) 295–5130, or via email at pam.weber@ocio.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: USDA Registration Form to Request Electronic Access Code.

OMB Number: 0503–0014.

Expiration Date of Approval: August 31, 2013.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The USDA OCIO has developed eAuth as a management and technical process that addresses user authentication and authorization prerequisites for providing services electronically. The process requires a one-time electronic self registration to obtain an eAuth account for each USDA customer desiring access to on-line services or applications that require user authentication. USDA customers can self register for a Level 1 or Level 2 Access account. A Level 1 Access account provides users with limited access to USDA Web site portals and applications that have minimal security requirements. A Level 2 Access account enables users to conduct official electronic business transactions via the Internet, enter into a contract with the USDA, and submit forms electronically via the Internet to USDA agencies. Due to the increased customer access associated with a Level 2 Access account, customers must be identity proofed, in addition to completing an electronic self registration. Identity proofing can be accomplished for customers in two ways: (1) By visiting a local registration authority at a USDA Service Center, or (2) through a new on-line identity proofing service. The new on-line identity proofing service will provide registrants with a more efficient mechanism to have their identity proofed. The on-line identity proofing requires responses to at least four randomly selected identity questions

that are verified by a third party identity proofing service in an automated interface. Once an account is activated, customers may use the associated user ID and password that they created to access USDA resources that are protected by eAuth.

Estimate of Burden: Public reporting burden for this collection of information is estimated to take eight (8) minutes to complete the self registration process for a Level 1 Access account. A Level 2 Access account registration is estimated to be completed in one hour 40 minutes when travelling to a USDA Service Center to visit a local registration authority (expected to be approximately 30% of the registrants), or 50 minutes when using the on-line identity proofing service (expected to be approximately 70% of the registrants).

Respondents: Individual USDA Customers.

Estimated Number of Respondents: 114,841 Level 1 and 14,860 Level 2 for an estimated total of 129,701 respondents.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 31,077 hours.

Comments are invited on (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of the information on those who respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods. Copies of the information collection may be obtained from Ms. Weber by calling or emailing your request to the contact information above in the **ADDRESSES** section. All responses to this notice will be summarized and included in the request for OMB

approval. All comments will become a matter of public record.

Cheryl L. Cook,

Chief Information Officer, Office of the Chief Information Officer, USDA.

[FR Doc. 2012–20200 Filed 8–16–12; 8:45 am]

BILLING CODE 3410–KR–P

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Technical Correction for the McKenzie Wild and Scenic River “Lower and Upper Portions”, Willamette National Forest, Lane County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: In accordance with Section 3(b) of the Wild and Scenic Rivers Act, the USDA Forest Service, Washington Office, is transmitting the technical correction for the boundary of the McKenzie Wild and Scenic River “Lower Portion” and “Upper Portion” to Congress.

FOR FURTHER INFORMATION CONTACT:

Information may be obtained by contacting the following office: Willamette National Forest, 3106 Pierce Parkway Suite D, Springfield, OR 97477, (541) 225–6300.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The McKenzie Wild and Scenic River “Lower and Upper Portions” boundary is available for review at the following offices: USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenues SW., Washington, DC 20024; USDA Forest Service, Pacific Northwest Region, 333 SW First Avenue, Portland, Oregon 97208–3623.

The Omnibus Oregon Wild and Scenic Rivers Act of 1988 (Pub. L. 100–557) designated the McKenzie River, Oregon, as a Wild and Scenic River, to be administered by the Secretary of Agriculture. As specified by law, the boundary will not be effective until ninety (90) days after Congress receives the transmittal.

Dated: August 13, 2012.

Maureen T. Hyzer,

Deputy Regional Forester.

[FR Doc. 2012–20226 Filed 8–16–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Beaverhead-Deerlodge National Forest, Wisdom and Wise River Ranger Districts; Montana; North and West Big Hole Allotment Management Plans

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The nature of the North and West Big Hole Allotment Management Plans (NWBH AMP's) project is the updating of eleven domestic livestock grazing management plans.

The scope of the project is limited to the specific eleven domestic livestock allotments on the Beaverhead-Deerlodge National Forest Service administered lands and those under agreement with the Bureau of Land Management (BLM) and Montana Fish, Wildlife, and Parks (FWP). This project is not a general management plan for the area, nor is it a programmatic environmental analysis for domestic livestock grazing on the entire forest.

DATES: Comments concerning the scope of the analysis must be received by September 17, 2012. The draft environmental impact statement is expected March of 2013 and the final environmental impact statement is expected September of 2013.

ADDRESSES: Send written comments to Attention Laura Hudnell, Beaverhead-Deerlodge National Forest, 420 Barrett St., Dillon, MT 59725 and weekdays 7:30 a.m. to 4:30 p.m. for hand delivery. Comments may also be sent via email to comments-northern-beaverhead-deerlodge@fs.fed.us in one of the following formats: Word (.doc or .docx), rich text format (.rtf), text (.txt), and/or hypertext markup language (.html), or via facsimile to Attention Laura Hudnell, NWBH AMP's, 406–683–3886. For all forms of comment, make sure to include your name, physical address, phone number, and a subject title of NWBH AMP's.

FOR FURTHER INFORMATION CONTACT: Mr. Russell Riebe, Wisdom/Wise River District Ranger at (406) 689–3243 or via email at rriebe@fs.fed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

This action is being undertaken to update the grazing management and

infrastructure on eleven domestic livestock grazing allotments (Seymour, Fishtrap, Mudd Creek, Pintlar Creek, Mussigbrod, Ruby Creek, Dry Creek, Twin Lakes, Monument, Pioneer, and Saginaw) to comply with the applicable 2009 Beaverhead-Deerlodge Land and Resource Management Plan (Forest Plan) direction.

This action is needed because there is new direction in the Forest Plan for livestock grazing, site specific suitability, and site specific Allowable Use Levels (AUL's).

Proposed Action

The authorizing official proposes to:

- Re-issue domestic livestock grazing permits for the eleven allotments for a period of ten years.
- Reduce the authorized number of Head Months (HM's) from 8,365 to 5,666 on National Forest Service lands. This would be a thirty-two percent reduction in the authorized HM's on National Forest lands within the project area. Seven of the allotments would see a decrease and four allotments would remain at the current permitted levels.
- Increase livestock numbers on three allotments, decrease the numbers on two allotments, and keep the same numbers on six allotments.
- Reduce the Season of Use (SOU) on five allotments and keep the same SOU on six allotments.
- Change the grazing system on seven allotments and keep four the same.
- Apply the site specific AUL's to all eleven allotments.
- Add new infrastructure on five allotments. Within these five allotments structural improvements would include the addition of one mile of fencing, a quarter mile of piping, development of two springs, addition of two water tanks, one new enclosure, three hardened crossings, and the conversion of three temporary enclosures to permanent enclosures.
- Implement compliance and long term rangeland monitoring on all eleven allotments.

Possible Alternatives

1—*No Action Alternative.* Under this alternative domestic livestock grazing permits on National Forest Service (NFS) lands on the eleven allotments would be discontinued with a minimum of two years notice (36 CFR 222.4(a)(1)) to permittees. No new term grazing permits for domestic livestock grazing would be issued.

2—*Current Grazing Management Alternative.* Under this alternative new term domestic livestock grazing permits would be issued with the current

management. Domestic livestock grazing would continue based on the Interim Livestock Grazing Standards (Forest Plan Ch. 3, pg. 26), the Forest Service (FS) Annual Operating Instructions (AOI), the 2012 Agreement for Coordination Management of Rangeland (ACMR) with the Bureau of Land Management (BLM), and the 2011 Cooperative Livestock Grazing Management Agreement (CLGMA) with Montana Fish, Wildlife, and Parks (FWP). There would be no changes or additions in grazing management or infrastructure.

Lead and Cooperating Agencies

The United States Department of Agriculture (USDA) Forest Service, Beaverhead-Deerlodge National Forest will be the lead agency. The BLM field offices in Dillon and Butte, Montana, and FWP office in Butte will be cooperating agencies.

Responsible Official

The Wisdom/Wise River District Ranger will be the responsible official.

Nature of Decision To Be Made

The decision to be made is whether to implement the proposed action, another alternative, or a combination of the alternatives.

Permits or Licenses Required

Grazing permits for domestic livestock grazing would be issued for ten years for each of the eleven allotments.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. A scoping letter and maps will be mailed to interested publics, Tribes, and federal, state, and local governments.

It is important that reviewers provide their comments at such times and in such a manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the Agency with the ability to provide the responder

with subsequent environmental documentation.

Dated: August 10, 2012.

Russell B. Riebe,

Wisdom/Wise River District Ranger.

[FR Doc. 2012-20209 Filed 8-16-12; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Southern New Mexico Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southern New Mexico Resource Advisory Committee will meet in Socorro, New Mexico. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review project proposals to be initiated with title II funds.

DATES: The meeting will be held September 6, 2012, 8 a.m.

ADDRESSES: The meeting will be held at Socorro County Annex Building, 198 Neel Avenue.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Lincoln National Forest Supervisor's Office, 3463 Las Palomas Road, Alamogordo, NM 88310. Please call ahead to 575-434-7200 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Patti Turpin, RAC Coordinator, 575-434-7230 or pturpin@fs.fed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112-141) (the Act) and operates in compliance

with the Federal Advisory Committee Act. The following business will be conducted: (1) Review of project proposals for initiation of title II funds; and (2) Public comment. The full agenda and order of proposal presentations can be found at https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Southern+New+Mexico?OpenDocument.

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 24 to be scheduled on the agenda.

Written comments and requests for time for oral comments must be sent to Patti Turpin by postal service, email, or facsimile (575-434-7218). A summary of the meeting will be posted at https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Southern+New+Mexico?OpenDocument within 21 days of the meeting.

Dated: August 13, 2012.

Kelly Russell,

Designated Federal Official.

[FR Doc. 2012-20224 Filed 8-16-12; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

El Dorado County Resource Advisory COMMITTEE

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The El Dorado County Resource Advisory Committee will meet in Placerville, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112-141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meetings are open to the public. The purpose of the meetings is to review and recommend projects authorized under title II of the Act.

DATES: The meetings will be held September 10, 17, 24, 2012, 6 p.m.

ADDRESSES: The meetings will be held in the Community Room at Folsom Lake College, El Dorado Center, 6699 Campus

Drive Placerville, CA 95667. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 100 Forni Road, Placerville, CA 95667. Please call ahead to 530-621-5268 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT:

Frank Mosbacher, Public Affairs Officer, 530-621-5268, fmosbacher@fs.fed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: project proposals will be reviewed and recommended for approval. Agendas may be viewed at: https://fsplaces.fs.fed.us/fsfiles/unwo/secure_rural_schools.nsf/Web_Agendas?OpenView&Count=1000&RestrictToCategory=E1+Dorado+County. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 27 for the September 10 meeting, September 3 for the September 17 meeting, and September 19 for the September 24 meeting to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Frank Mosbacher; 100 Forni Road, Placerville, CA 95667, or by email to fmosbacher@fs.fed.us or via facsimile to 530-621-5297. A summary of the meeting will be posted at https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/Web_Agendas?OpenView&Count=1000&RestrictToCategory=E1+Dorado+County within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed under For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 6, 2012.

Kathryn D. Hardy,

Forest Supervisor.

[FR Doc. 2012-19838 Filed 8-16-12; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Fishlake Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fishlake Resource Advisory Committee will meet in Richfield, Utah. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112-141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects under title II of the Act, and receive public comments on the meeting subjects and proceedings.

DATES: The meeting will be held September 25, 2012, 1 p.m.

ADDRESSES: The meeting will be held at the Fishlake National Forest office, 115 E. 900 N., Richfield, Utah. Written comments may be submitted as described under Supplemental Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 115 E 900 N, Richfield, UT 84701. Please call ahead to (435) 896-1070 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: John Zapell, RAC Coordinator, Fishlake National Forest, (435) 896-1070; email: jzapell@fs.fed.us. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Review and recommend projects for approval, and (2) receive public comment on the meeting subjects and proceedings. The meeting agenda, proposed projects and other information about the Fishlake RAC may be found

at: https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/AA113CC501D12647882575BD006DF2AA?OpenDocument. Anyone

who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 14, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Fishlake RAC Coordinator, 115 E 900 N, Richfield, UT 84701, or by email to jzapell@fs.fed.us, or via facsimile (435) 896-9347. A summary of the meeting will be posted on the web site listed above within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed under For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 13, 2012.

Mel Bolling,

Acting Forest Supervisor.

[FR Doc. 2012-20208 Filed 8-16-12; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Dixie Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Dixie Resource Advisory Committee will meet in Panguitch, Utah. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112-141) and in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act.

DATES: Wednesday, September 12, 2012, 9 a.m.

ADDRESSES: The meeting will be held at Panguitch City offices, 25 South 200 East, Panguitch, Utah.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 1789 North Wedgewood Lane, Cedar City, Utah. Please call ahead to (435) 865-3700 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT:

Janice Minarik, RAC Coordinator, Dixie National Forest, (435) 865-3794; email: jminarik@fs.fed.us. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The

following business will be conducted: (1) Welcome and committee introductions; (2) Review the purpose of the Act and reauthorization; (3) RAC project presentations and general discussion; and (4) Caucus discussions and final vote. The full agenda and additional information may be previewed at <http://www.fs.usda.gov/dixie/>. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments must be sent to the RAC Coordinator, 1789 North Wedgewood Lane, Cedar City, Utah 84721, or by email to jminarik@fs.fed.us, or via facsimile to (435) 865-3791. A summary of the meeting will be posted at <http://www.fs.usda.gov/dixie/> within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility for proceedings by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 3, 2012.

Kevin R. Schulkoski,

Acting Forest Supervisor.

[FR Doc. 2012-19491 Filed 8-16-12; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Gallatin County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Gallatin County Resource Advisory Committee will meet in Bozeman, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112-141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act.

DATES: The meeting will be held Wednesday, September 12, 2012 from 1 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Bozeman Public Library, 626 East Main Street Bozeman, MT 59715. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying.

The public may inspect comments received at 1310 Main Street, Billings, Montana Please call ahead to 406-255-1411 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT:

Mariah Leuschen, RAC Coordinator, Custer and Gallatin National Forests, (406) 255-1411 or Mary Erickson, Forest Supervisor and Designated Federal Official, Custer and Gallatin National Forests, (406) 587-6949. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Overview of current project status and discussion and decisions on future project recommendations. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or

less. Individuals wishing to make an oral statement should request in writing by September 1, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Mariah Leuschen, 1310 Main Street, Billings, Montana 59105, or by email to mdleuschen@fs.fed.us, or via facsimile to 406-255-1499. A summary of the meeting will be posted at www.fs.usda.gov/gallatin within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Dated: August 8, 2012.

Marna Daley,

Acting Forest Supervisor.

[FR Doc. 2012-19881 Filed 8-16-12; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Pennington County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Pennington County Resource Advisory Committee will meet in Rapid City, SD. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112-141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend project proposals authorized under title II of the Act.

DATES: The meetings will be held September 11 and September 27, 2012, at 5:00 p.m.

ADDRESSES: The meetings will be held at the Mystic Ranger District Office at 8221 South Highway 16. Written comments should be sent to Jon M. Stansfield, 8221 South Highway 16, Rapid City, SD 57702. Comments may also be sent via email to jstansfield@fs.fed.us, or via facsimile to 605-343-7134.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Mystic Ranger District office. Visitors are encouraged to call ahead at 605-343-1567 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jon M. Stansfield, Acting District Ranger, Mystic Ranger District, 605-343-1567.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Meetings are open to the public. The following business will be conducted: Review and recommend project proposals authorized under title II of the Act.

Persons who wish to bring matters to the attention of the Committee may submit comments in the form of written correspondence to the Committee staff before or after the meeting.

Dated: August 10, 2012.

Craig Bobzien,
Forest Supervisor.

[FR Doc. 2012-20217 Filed 8-16-12; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Big Horn County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Big Horn County Resource Advisory Committee will meet in Greybull, Wyoming. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112-141) and in compliance with the Federal Advisory Committee Act. The purpose is to hold the sixth meeting and to vote on project proposals.

DATES: The meeting will be held on September 11, 2012 and will begin at 3 p.m.

ADDRESSES: The meeting will be held at the Big Horn County Weed and Pest Building, 4782 Highway 310, Greybull, Wyoming. Written comments about this meeting should be sent to Laurie Walters-Clark, Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, Wyoming 82801. Comments may also be sent via email to comments-bighorn@fs.fed.us, with the words Big

Horn County RAC in the subject line. Facsimiles may be sent to 307-674-2668.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, Wyoming 82801. Visitors are encouraged to call ahead to 307-674-2600 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Laurie Walters-Clark, RAC Coordinator, USDA, Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, Wyoming 82801; (307) 674-2627.

Individuals who use telecommunication devices for the hearing impaired may call 1-307-674-2604 between 8 a.m. and 5 p.m., Mountain time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Introductions, (2) Project reviews, (3) Public Comment; and (4) Project voting for recommendation. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 13, 2012.

William T. Bass,
Forest Supervisor.

[FR Doc. 2012-20222 Filed 8-16-12; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting of the Amador County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Amador County Resource Advisory Committee will meet in Sutter Creek, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112-141) (the Act) and operates in compliance with the Federal Advisory Committee

Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. The meeting is open to the public. The purpose of the meeting is to discuss the committee's processes and procedures, review applications, and make recommendations for projects to be approved.

DATES: The meeting will be held September 11, 2012, 6 p.m.

ADDRESSES: The meeting will be held at the Amador County Public Health Building, Conference Room A; 10877 Conductor Road, Sutter Creek, CA.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Eldorado National Forest Headquarter's Office; 100 Forni Road, Placerville, CA. Please call ahead to (530) 622-5061 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Frank Mosbacher, Resource Advisory Committee Coordinator, Forest headquarters, 100 Forni Road, Placerville, CA (530) 621-5268, TTY (530) 642-5122, fmosbacher@fs.fed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Review and discuss the committee's processes and procedures, review project proposals, and make recommendations for projects to be approved. The full agenda will be posted on the Web at: https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/Web_Agendas?OpenView&Count=1000&RestrictToCategory=Amador+County. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 31, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Frank Mosbacher, RAC Coordinator; 100 Forni Road, Placerville, CA 95667 or by email to fmosbacher@fs.fed.us, or

via facsimile to 530-621-5297. A summary of the meeting will be posted at https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/WebAgendas?OpenView&Count=1000&RestrictToCategory=Amador+County within 21 days of the meeting.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices or other reasonable accommodation please request this in advance of the meeting by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 13, 2012.

Kathryn D. Hardy,

Forest Supervisor, Eldorado National Forest.

[FR Doc. 2012-20212 Filed 8-16-12; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Southern Montana Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southern Montana Resource Advisory Committee will meet in Columbus, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112-141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act.

DATES: The meeting will be held Wednesday, September 5 and Thursday, September 13, 2012 from 9:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Columbus Fire Hall, 944 East Pike Avenue Columbus, MT 59019. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying.

The public may inspect comments received at 1310 Main Street, Billings, Montana. Please call ahead to 406-255-

1411 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT:

Mariah Leuschen, RAC Coordinator, Custer and Gallatin National Forests, (406) 255-1411 or Mary Erickson, Forest Supervisor and Designated Federal Official, Custer and Gallatin National Forests, (406) 587-6949. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Overview of current project status and discussion and decisions on future project recommendations. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 1, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Mariah Leuschen, 1310 Main Street, Billings, Montana 59105, or by email to mdleuschen@fs.fed.us, or via facsimile to 406-255-1499. A summary of the meeting will be posted at www.fs.usda.gov/custer and www.frusda.gov/gallatin within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Dated: August 8, 2012.

Marna Daley,

Acting Forest Supervisor.

[FR Doc. 2012-19877 Filed 8-16-12; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-601]

Brass Sheet and Strip From Italy: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 17, 2012.

FOR FURTHER INFORMATION CONTACT:

Mahnaz Khan 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) 482-0914 or (202) 482-3183, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2012, the Department of Commerce ("Department") published in the **Federal Register** the notice of opportunity to request an administrative review of the antidumping duty order on brass sheet and strip from Italy for the period of review, March 1, 2011, through February 29, 2012. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 77 FR 12559 (March 1, 2012). On April 2, 2012, GBC Metals, LLC, of Global Brass and Copper, Inc., dba Olin Brass, Heyco Metals, Inc., Aurubis Buffalo, Inc., PMX Industries, Inc., and Revere Copper Products, Inc. (collectively, "Petitioners") timely requested that the Department conduct an administrative review of KME Italy SpA ("KME Italy"). Pursuant to this request and in accordance with 19 CFR 351.221(c)(1)(i), the Department published a notice initiating the administrative review of KME Italy. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 25401 (April 30, 2012). On July 26, 2012, Petitioners withdrew their request for an administrative review of KME Italy.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, Petitioners withdrew their request for

review of KME Italy within 90 days of the date of publication of the notice of initiation. Moreover, no other interested party requested an administrative review of KME Italy. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review in its entirety.

Assessment

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all entries of brass sheet and strip from Italy. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent increase in antidumping duties by the amount of antidumping duties reimbursed.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 9, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012-20201 Filed 8-16-12; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: On August 9, 2012, a Motion to Terminate Panel Review of the final results of the U.S. Department of Commerce's 2009-2010 Antidumping Administrative Review of Light-Walled Rectangular Pipe and Tube from Mexico (Secretariat File No. USA-MEX-2012-1904-01).

SUMMARY: Pursuant to the Notice of Motion requesting termination of the panel review by a participant and consented to by all the participants, the panel review is terminated as of August 9, 2012. A panel has not been appointed to this panel review. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Ellen Bohon, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free Trade Agreement ("Agreement") established a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada, and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: August 13, 2012.

Ellen Bohon,

United States Secretary, NAFTA Secretariat.

[FR Doc. 2012-20225 Filed 8-16-12; 8:45 am]

BILLING CODE 3510-GT-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Steller Sea Lion Mitigation Committee (SSLMC) will meet in September, in Juneau, AK.

DATES: The meeting will be held September 5-7, 2012, from 8:30 a.m. through 5 p.m. AST.

ADDRESSES: The meeting will be held in the 4th floor conference room at the Federal Building at 700 West 9th Street, Juneau, AK.

Council Address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

FOR FURTHER INFORMATION CONTACT: Steve MacLean, North Pacific Fishery Management Council; telephone: (907) 271-2809.

SUPPLEMENTARY INFORMATION: Foreign nationals wishing to attend this meeting in person should contact the Council as soon as possible to expedite security clearance at the Federal Building in Juneau. This public meeting will occur during the scoping period for the Steller Sea Lion Protection Measures EIS (77 FR 22750, April 17, 2012). Information on EIS development, potential alternatives, and issues for analysis may be discussed. The public is encouraged to attend in this meeting, however, comments specific to the EIS should be submitted in writing to NMFS before the close of the scoping period on October 15, 2012. More information on the EIS scoping process and instructions for submitting written public comments are available on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov/sustainablefisheries/sslpm/eis/default.htm>. Additional information is posted on the Council Web site: <http://www.alaskafisheries.noaa.gov/npfmc/>.

The meeting will be webcast to allow the public to watch and hear presentations. Comments will not be accepted via webcast or teleconference.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271-2809, at least 5 working days prior to the meeting date.

Dated: August 14, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012-20216 Filed 8-16-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council (MAFMC); Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public hearings to allow for public input on Amendment 3 to the Spiny Dogfish Fishery Management Plan (FMP).

DATES: Written comments must be received on or before 5 p.m., EST, on September 24, 2012. The public hearings will be held on September 4, 5, and 6, 2012, starting at 7 p.m.

ADDRESSES: The hearings will be held, in chronological order, as follows: September 4, 2012 at the Magnuson Hotel Norfolk Airport, 5708 Northampton Blvd., Virginia Beach, VA 23455, telephone: (757) 460-2205; September 5, 2012 at The Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08050, telephone: (609) 481-6100; and September 6, 2012 at the Hilton Garden Inn Providence Airport/Warwick, One Thuber Street, Warwick, RI 02886, telephone: (401) 734-9600. Written comments should be mailed to the Council office at the address below and marked "AMENDMENT 3." The public hearing document can be obtained by contacting the Council at the address below or at <http://www.mafmc.org/fmp/dogfish/dogfish.htm>.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St.,

Suite 201, Dover, DE 19901; telephone: (302) 674-2331.

FOR FURTHER INFORMATION CONTACT:

Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526-5255.

SUPPLEMENTARY INFORMATION:

Amendment 3 addresses four management issues related to management of the spiny dogfish fishery in Atlantic federal waters. Specifically, the Amendment addresses (1) adding an option for allocating a small portion of the annual commercial quota as research set-aside, (2) reviewing and updating essential fish habitat (EFH) for spiny dogfish, (3) maintaining previous year annual management measures in case of a delay in the implementation of new annual measures, and (4) modifying the existing seasonal allocation of the annual quota to minimize conflicts with the geographically allocated interstate fishery.

Summaries of the proposed actions will be available and presented at the hearings. A draft Environmental Assessment (EA) that analyzes the proposed actions is available by contacting the Council office at <http://www.mafmc.org/fmp/dogfish/dogfish.htm> after August 31st. If no one from the public has arrived half an hour after the hearing start time, the hearing may be closed. Some GPS navigation units may provide faulty directions for these locations so call ahead with the number provided if unfamiliar with a hearing location. All hearings will be digitally recorded and saved as transcripts of the hearing.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526-5251, at least 5 days prior to the hearing date.

Dated: August 14, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012-20215 Filed 8-16-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO-C-2011-0041]

Extension of the Application Deadline for Humanitarian Awards Pilot Program

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In February 2012, the United States Patent and Trademark Office (USPTO) announced the Humanitarian Awards Pilot Program, which recognizes patent holders who use their technology for humanitarian purposes. In response to stakeholder feedback, the USPTO is extending the deadline for applications to the Humanitarian Awards Pilot Program by two months until October 31, 2012, to allow potential applicants more time to complete their applications.

DATES: *Effective Date:* August 17, 2012.

FOR FURTHER INFORMATION CONTACT: Office of Policy and External Affairs, by telephone at (571) 272-9300; or by mail addressed to: Patents for Humanity Program, Office of Policy and External Affairs, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; or by email to patentsforhumanity@uspto.gov.

SUPPLEMENTARY INFORMATION: In February, the USPTO initiated a pilot program which recognizes patent holders who use their technology for humanitarian purposes, called the Humanitarian Awards Pilot Program ("the Pilot", also known as Patents for Humanity). *See Humanitarian Awards Pilot Program*, 77 FR 6544 (Feb. 8, 2012). The original deadline for applications to the Pilot was August 31, 2012, with selection and awards to follow.

While conducting outreach to our user community we have received much feedback on the Pilot, including a number of requests to extend the deadline for filing applications past August 31. Among the reasons given, applicants have said that they are engaged in qualifying work which will not be complete before the deadline; or they do not have enough time to complete an application before the deadline.

In response to these requests, the USPTO is extending the application deadline for the Humanitarian Awards Pilot Program until October 31, 2012. After the application deadline, selections will be made as described in

the February notice, with the goal of completing the recommendation process within 90 days. Awards will be made thereafter. The other terms of the program remain unchanged.

Dated: August 13, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–20242 Filed 8–16–12; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Effective 9/17/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Additions

On 6/15/2012 (77 FR 35942–35944) and 6/22/2012 (77 FR 37659–37660), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN: 7510–01–156–7936—Presentation Folder, Dark Blue with Debossed Gold Seal, Soft Cover

NSN: 7510–01–GG0–1102—Award Folder, Public Service with White Debossed Gold Seal, Hard Cover

NSN: 7510–01–094–1485—Award Folder, Commandant Medal, Dark Blue with Debossed Gold Seal, Padded Cover

NSN: 7510–01–097–6004—Award Folder, Commandant Letter, Dark Blue with Debossed Gold Seal, Hard Cover

NPA: Dallas Lighthouse for the Blind, Inc., Dallas, TX

Contracting Activity: Department of Homeland Security, U.S. Coast Guard, SFLC Procurement Branch 3, Baltimore, MD

Coverage: C-List for 100% of the requirement of the U.S. Coast Guard, as aggregated by the U.S. Coast Guard, Baltimore, MD.

Services

Service Type/Location: Custodial Service, U.S. Military Academy (USMA), Warrior Transition Unit, Building #624, West Point, NY

NPA: Occupations, Inc., Middletown, NY

Contracting Activity: Dept of the Army, W6QM MICC—West Point, West Point, NY

Service Type/Location: Grounds Maintenance, U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ), 6302 NW 36th Street, Miami, FL

NPA: Goodwill Industries of South Florida, Inc., Miami, FL

Contracting Activity: Dept of Agriculture, Animal and Plant Health Inspection Service, Minneapolis, MN

Service Type/Location: Administrative Services, Housing and Urban Development (HUD)—Atlanta Field Office, 40 Marietta Street, Atlanta, GA

NPA: Nobis Enterprises, Inc., Marietta, GA

Contracting Activity: Dept of Housing and

Urban Development, Chicago Regional Office, RCO, Chicago, IL

Service Type/Locations: Warehouse & Supply Support Services, Naval Amphibious Base Little Creek, Building 1558, 2425 Stalwart Drive, Norfolk, VA

Norfolk Naval Base, 1837 Morris Street, Building Z133, Aircraft Tow Way, Building V53, Norfolk, VA

St. Juliens Creek Annex, Building 174 “E” Street, Buildings 59 & 79 Magazine Road, Portsmouth, VA

Washington Navy Yard, 1325 10th Street SE, Washington, DC

NPA: Goodwill Services, Inc., Richmond, VA

Contracting Activity: Dept of the Navy, SPAWAR Systems Center Atlantic, North Charleston, SC

Service Type/Location: Grounds

Maintenance, Corpus Christi Resident

Office, U.S. Army Corps of Engineers

(USACE), Southern Area Office (SAO),

1920 N. Chaparral St., Corpus Christi, TX

NPA: Training, Rehabilitation, &

Development Institute, Inc., San

Antonio, TX

Contracting Activity: Dept of the Army, W076 ENDIST Galveston, Galveston, TX

Service Type/Location: Firewatch/Tank Void/Lead Handler Support Services,

Puget Sound Naval Ship Yards at

Bremerton, Bangor and Keyport, 1400

Farragut Avenue, Bremerton, WA

NPA: Skookum Educational Programs, Bremerton, WA

Contracting Activity: Dept of the Navy, NAVSUP FLT LOG CTR puget sound, Bremerton, WA

Service Type/Location: Document

Management Services, Department of

Homeland Security, Customs and Border

Protection, Passenger Systems Program

Office, (Offsite: 3043 Sanitarium Road,

Akron, OH) 1331 Pennsylvania Avenue

NW, Washington, DC

NPA: Coleman Professional Services, Kent, OH

Contracting Activity: Dept of Homeland Security, U.S. Customs and Border Protection, Information Technology Contracting Division, Washington, DC

Service Type/Location: Courier Service, Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (USICE), Office of the Principal Legal Advisor, New York Office of Chief Counsel, 290 Broadway Street, New York, NY

NPA: Fedcap Rehabilitation Services, Inc., New York, NY

Contracting Activity: Dept of Homeland Security, U.S. Immigration and Customs Enforcement, Mission Support Orlando, Orlando, FL

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–20252 Filed 8–16–12; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: 9/17/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

For Further Information or to Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the services to the Government.
2. If approved, the action will result in authorizing small entities to provide the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification

on which they are providing additional information.

End of Certification

The following services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Service, Customs and Border Protection, Port Angeles Station, 110 South Penn St., Port Angeles, WA

NPA: Morningside, Olympia, WA

Contracting Activity: Dept. of Homeland Security, U.S. Customs and Border Protection, Procurement Directorate, Washington, DC

Service Type/Location: Custodial and Grounds Maintenance Services, Austin Courthouse, 501 West 5th Street, Austin, TX

NPA: Crossroads Diversified Service, Inc., Sacramento, CA

Contracting Activity: General Services Administration, Public Buildings Service, Building Services Team, Fort Worth, TX

Service Type/Locations: Custodial and Grounds Maintenance Services, Border Patrol Sector HDQ, 3819 Patterson Road, New Orleans, LA

Federal Supply Service (FSS) Depot, 400 Edwards Avenue, Harahan, LA
NPA: Louisiana Industries for the Disabled, Inc., Baton Rouge, LA

Contracting Activity: General Services Administration, Public Buildings Service, Building Services Team, Fort Worth, TX

Service Type/Location: Base Operations Support Services, Department of Public Works (DPW), 453 Novosel Street, Fort Rucker, AL

NPA: PRIDE Industries, Roseville, CA
Contracting Activity: Dept. of the Army, W6QM MICC-Ft. Rucker, Fort Rucker, AL

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012-20253 Filed 8-16-12; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Meetings for the Draft Environmental Impact Statement/Legislative Environmental Impact Statement for Renewal of Naval Air Weapons Station China Lake Public Land Withdrawal, California

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 (40 Code of Federal Regulations (CFR) parts 1500-1508), and in accordance with the requirements of the California Military Lands Withdrawal and Overflights Act of 1994 (Pub. L. 103-433, part of the California Desert Protection Act), the Department of the Navy (DoN), in cooperation with the Bureau of Land Management (BLM), has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (EIS)/Legislative Environmental Impact Statement (LEIS). Separately, and in accordance with the Engle Act of 1958 (Pub. L. 85-337) and 43 CFR part 2310, the DoN submitted a land withdrawal renewal application to BLM.

The Draft EIS/LEIS evaluates the potential environmental effects associated with the proposed Congressional reauthorization of the current land withdrawal of approximately 1.03 million acres of public land in Kern, Inyo, and San Bernardino counties, California. The proposed 25-year withdrawal would comprise the current North and South ranges at Naval Air Weapons Station China Lake (NAWSCL), California. The Draft EIS/LEIS also addresses an increase of up to 25 percent in the tempo of military activity within current land use areas approved for designated uses, and the implementation of an update of the installation's Comprehensive Land Use Management Plan (CLUMP). The proposed action would enable the DoN to meet its mission to support state-of-the-art air warfare weapons systems testing and evaluation, and the readiness of the military services, using existing facilities and infrastructure, and on safe, operationally realistic, and instrumented land ranges.

With the filing of the Draft EIS/LEIS and submission of the application to renew the public land withdrawal, the DoN and BLM are initiating a 90-day public comment period and have scheduled three public open house meetings to receive oral and written comments on the Draft EIS/LEIS and the proposed renewal of the public land withdrawal. This notice announces the dates and locations of the public meetings and provides supplementary information.

Dates and Addresses: The 90-day public comment period for the Draft EIS/LEIS began on August 10, 2012 and will end on November 8, 2012. The DoN and BLM will hold three public meetings, using an open house format, to inform the public about the Draft EIS/LEIS and the public land withdrawal

renewal process. Representatives from the DoN and BLM will be available to discuss and answer questions on the proposed action and alternatives, the land withdrawal renewal, the environmental planning process, and the findings presented in the Draft EIS/LEIS. Public open house meetings will be held at each location between 6:00 p.m. and 8:00 p.m. on the following dates:

1. Tuesday, October 2, 2012, SpringHill Suites, 113 East Sydnor Avenue, Ridgcrest, California 93555.
2. Wednesday, October 3, 2012, Trona Community Senior Center, 13187 Market Street, Trona, California 93562.
3. Thursday, October 4, 2012, Statham Hall, 138 North Jackson Street, Lone Pine, California 93545.

Federal, state and local agencies and officials, and interested groups and individuals are encouraged to provide oral or written comments in person at any of the public meetings. A stenographer will be present to transcribe oral comments. Comments also may be submitted in writing anytime during the public comment period to: Naval Facilities Engineering Command Southwest, ATTN: NAWSCL Land Withdrawal Renewal EIS/LEIS Project Manager (Mr. Gene Beale), 1220 Pacific Highway, San Diego, California 92132-5190. In addition, comments may be submitted any time during the public comment period via the project Web site: <http://www.chinalakeleis.com>.

All statements, whether oral, oral transcription, written, or submitted via the web site during the public review period will become part of the public record on the Draft EIS/LEIS and be considered in preparing the Final EIS/LEIS if postmarked or received by November 8, 2012.

FOR FURTHER INFORMATION CONTACT:

Naval Facilities Engineering Command, Southwest, ATTN: NAWSCL Land Withdrawal Renewal EIS/LEIS Project Manager (Mr. Gene Beale), 1220 Pacific Highway, San Diego, California 92132-5190.

SUPPLEMENTARY INFORMATION: The California Military Lands Withdrawal and Overflights Act of 1994, withdrew and reserved approximately 1.03 million acres of public lands comprising the NAWSCL for defense-related purposes for a period of 20 years (until October 14, 2014). The Secretary of the DoN is seeking to extend the withdrawal of these public lands and is required to publish a draft EIS addressing the effects of continued withdrawal by October 31, 2012. On June 10, 2011, the DoN published a Notice of Intent to prepare this EIS/LEIS in the **Federal**

Register (76 FR 34066) and on June 13, 2011 submitted a land withdrawal application to BLM. This notice announces the availability of the Draft EIS/LEIS for public review and the dates and locations of public meetings to receive comments on the Draft EIS/LEIS.

The purpose of the proposed action is to support the renewal of the 1994 withdrawal at NAWSCL by an Act of Congress in order to continue to support DoN and Department of Defense (DoD) DoD use of 1.03 million acres of fully instrumented land ranges for Research, Development, Acquisition, Test, and Evaluation (RDAT&E) and military readiness training activities. NAWSCL is the DoN's full-spectrum RDAT&E center for weapons systems associated with air warfare, aircraft weapons integration, missiles and missile subsystems, and assigned airborne electronic warfare systems. RDAT&E activities are needed to develop new weapons systems and ensure that these systems perform to their designed specifications. The NAWSCL land ranges provide the safe, operationally realistic, and instrumented environment needed to fulfill DoN and DoD RDAT&E requirements. Tenant commands supported are the Naval Air Warfare Center Weapons Division and other DoD RDAT&E and training activities.

The proposed action will also support the revision, update, and implementation of NAWSCL's CLUMP, which meets the land, cultural, natural, and environmental resources management requirements of the California Desert Protection Act and the Sikes Act (16 U.S. Code 670a-670o, as amended in 1997). The updated CLUMP will ensure no loss in the capability of the installation to support its military mission and facilitate environmentally sound resource management decisions when responding to planned increases in emerging military readiness needs. It would also support the warfighter by ensuring the land use management supports current and evolving technology, allowing for solutions to theater-relevant problems and to maintain readiness.

The Draft EIS/LEIS evaluates the potential environmental impacts of two action alternatives and the No Action Alternative. Alternative 1 (Withdrawal and Increased Tempo) is the DoN's preferred alternative and provides NAWSCL the greatest flexibility to accommodate current and evolving DoN and DoD military readiness activities. Alternative 1 includes: (1) Congressional renewal of the land withdrawal for a period of 25 years; (2) revise and implement the CLUMP; and (3) increase mission activities by up to

25 percent, expand unmanned aerial and surface systems, and expand existing and introduce evolving directed energy weapons development.

Alternative 2 (Withdrawal and Baseline Tempo) provides for the Congressional renewal of the land withdrawal (25 year renewal) and continuation of military activities at current levels. Nonmilitary activities would continue according to current patterns of use. The existing CLUMP would be revised, as appropriate, and implemented to manage land use and environmental resources at NAWSCL.

Under the No Action Alternative (Alternative 3), the renewal of the withdrawal of public lands at NAWSCL would not occur; administrative control of the withdrawn land would remain with the DoN until environmental remediation and health and safety concerns were addressed to allow the return of the land to BLM. The expiration of the public land withdrawal would terminate the DoN's authority to use approximately 92 percent of the NAWSCL-managed lands. Although the DoN would continue to be responsible for the remaining fee-owned/leased land and managed airspace, these land resources would not be sufficient to accommodate the hazard patterns, targets, maneuvering areas, special equipment, explosive areas, and other features associated with RDAT&E and training events. As a result, there would be a probable dramatic reduction in, or potentially the eventual cessation of, RDAT&E activities at NAWSCL.

The Draft EIS/LEIS provides an analysis of the potential environmental effects of the proposed action on the following resources: Land use, noise, air quality, biological resources, cultural resources, geology and soils, water resources, socioeconomics (including environmental justice), utilities and public services, public health and safety, hazardous materials and waste, and traffic and circulation.

Specific findings within the Draft EIS/LEIS indicate that ongoing aircraft flight events at Armitage Field would exceed noise compatibility thresholds at certain off-installation noise sensitive receptors. However, the continued implementation of the land use management recommendations identified in the 2011 Air Installation Compatibility Use Zones Update would minimize noise impacts to surrounding areas.

Potential brush fires associated with the proposed testing and training activities may result in significant impacts to biological resources. Implementation of mitigation and conservation measures as described in the NAWSCL Integrated Natural

Resources Management Plan would reduce these potential impacts. On March 9, 2012, the DoN initiated consultation with the U.S. Fish and Wildlife Service in accordance with Section 7 of the Endangered Species Act for the potential impacts to Federally-listed species present at NAWSCL (specifically, desert tortoise, Mojave tui chub, southwestern willow flycatcher, least Bell's vireo, and Inyo California towhee).

Impacts to cultural resources from the proposed action would not be significant and would be further reduced by implementation of the standard operating procedures for the treatment of cultural resources described in the Integrated Cultural Resources Management Plan. In accordance with Section 106 of the National Historic Preservation Act, the DoN initiated consultation with the State Historic Preservation Officer for on March 9, 2012. Native American access to the Coso Hot Springs and Prayer Site would continue to be conducted in accordance with the existing Memorandum of Agreement between NAWSCL and Native American tribes.

The Draft EIS/LEIS was distributed to Federal, state, and local agencies, elected officials, and other interested individuals and organizations. Copies of the Draft EIS/LEIS are available for public review at the following libraries:

1. Ridgecrest Public Library, 131 East Las Flores Avenue, Ridgecrest, California 93555.
2. Trona Branch Library, 82805 Mount View, Trona, California 93562.
3. Lone Pine Branch Library, 127 Bush Street, Lone Pine, California 93545.
4. Barstow Branch Library, 304 East Buena Vista Street, Barstow, California 92311.
5. Mojave Public Library, 16916-1/2 State Highway 14, Space D2, Mojave, California 93501.
6. Lancaster Public Library, 601 West Lancaster Boulevard, Lancaster, California 93534.

The Draft EIS/LEIS is also available for electronic viewing or download at the project Web site at <http://www.chinalakeleis.com>. A paper copy of the Executive Summary or a single compact disc of the Draft EIS/LEIS will be made available upon written request.

Dated: August 14, 2012.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012-20279 Filed 8-16-12; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity (NACIQI)

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Office of Postsecondary Education, U.S. Department of Education.

ACTION: Announcement of an open meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI) and information pertaining to members of the public submitting third-party written and oral comments.

ADDRESSES: U.S. Department of Education, Office of Postsecondary Education, 1990 K Street NW., Room 8072, Washington, DC 20006.

NACIQI'S Statutory Authority and Function: The NACIQI is established under Section 114 of the HEA of 1965, as amended, 20 U.S.C. 1011c. The NACIQI advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under Subpart 2, Part H, Title IV, of the HEA, as amended.
- The recognition of specific accrediting agencies or associations or a specific State approval agency.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, of the HEA, together with recommendations for improvement in such process.
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory function relating to accreditation and institutional eligibility that the Secretary may prescribe.

SUMMARY: This notice sets forth the agenda for the December 11–12, 2012, meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI); and provides information to members of the public on submitting written comments and on requesting to make oral comments at the meeting. The notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act (FACA) and Section 114(d)(1)(B) of the Higher Education Act (HEA) of 1965, as amended.

Meeting Date and Place: The NACIQI meeting will be held on December 11–

12, 2012, from approximately 8:00 a.m. to approximately 5:30 p.m. at a location to be determined in the Washington, DC area. The exact location will be published in the **Federal Register** and on the Department's Web site at <http://www2.ed.gov/about/bdscomm/list/naciqi.html#meetings> by November 2, 2012.

Meeting Agenda: The meeting will include a review of accrediting and State agencies seeking a renewal of recognition and a policy discussion session on NACIQI's potential for addressing HEA-related accreditation issues and recommendations currently being discussed within the higher education community. Below is a list of agencies, including their current and requested scopes of recognition, scheduled for review during the December 11–12, 2012, meeting:

Petitions for Continued Recognition

Accrediting Agencies

1. Academy of Nutrition and Dietetics, Accreditation Council for Education in Nutrition and Dietetics (ACEND) (Current and Requested Scope: The accreditation and pre-accreditation, within the United States, of Didactic and Coordinated Programs in Dietetics at both the undergraduate and graduate level, post-baccalaureate Dietetic Internships, and Dietetic Technician Programs at the associate degree level, and for its accreditation of such programs offered via distance education.)

2. American Physical Therapy Association, Commission on Accreditation in Physical Therapy Education (CAPTE) (Current and Requested Scope: The accreditation and preaccreditation ("Candidate for Accreditation") in the United States of physical therapist education programs leading to the first professional degree at the master's or doctoral level and physical therapist assistant education programs at the associate degree level and for its accreditation of such programs offered via distance education.)

3. American Veterinary Medical Association, Council on Education (AVMA-COE) (Current and Requested Scope: The accreditation and preaccreditation ("Reasonable Assurance") in the United States of programs leading to professional degrees (D.V.M. or D.M.D.) in veterinary medicine.)

4. Liaison Committee on Medical Education (LCME) (Current and Requested Scope: The accreditation of medical education programs within the

United States leading to the M.D. degree.)

5. Middle States Commission on Higher Education (MSCHE) (Current Scope: The accreditation and preaccreditation ("Candidacy Status") of institutions of higher education in Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, and the U.S. Virgin Islands, including distance education programs offered at those institutions.) REQUESTED SCOPE: The accreditation and preaccreditation ("Candidacy Status") of institutions of higher education in Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, and the U.S. Virgin Islands, including distance education and correspondence education offered at those institutions.

6. New York State Board of Regents, and the Commissioner of Education (NYBRE) (Current and Requested Scope: The accreditation of those degree-granting institutions of higher education in New York, including distance education offered by those institutions, that designate the agency as their sole or primary nationally recognized accrediting agency for purposes of establishing eligibility to participate in HEA programs.)

7. Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities (WASC SR) (Current and Requested Scope: The accreditation and preaccreditation ("Candidate for Accreditation") of senior colleges and universities in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands and the Republic of the Marshall Islands, including distance education programs offered at those institutions.)

State Agencies Recognized for the Approval of Nurse Education

1. Missouri State Board of Nursing (MOSBN) (Current Scope: State agency for the approval of nurse education in the State of Missouri.)

Compliance Reports

1. Accrediting Bureau of Health Education Schools (ABHES) (Current Scope: The accreditation of private, postsecondary institutions in the United States offering predominantly allied health education programs and the programmatic accreditation of medical assistant, medical laboratory technician and surgical technology programs, leading to a certificate, diploma, Associate of Applied Science, Associate

of Occupational Science, Academic Associate degree, or Baccalaureate degree, including those offered via distance education.)

2. American Board of Funeral Service Education (ABFSE) (Current Scope: The accreditation of institutions and programs within the United States awarding diplomas, associate degrees and bachelor's degrees in funeral service or mortuary science, including the accreditation of distance learning courses and programs offered by these programs and institutions.)

3. Commission on Massage Therapy Accreditation (COMTA) (Current Scope: The accreditation of institutions and programs in the United States that award postsecondary certificates, postsecondary diplomas, academic Associate degrees and occupational Associate degrees, in the practice of massage therapy, bodywork, and aesthetics/esthetics and skin care, including components of programs which are offered through distance learning modalities.)

4. Distance Education and Training Council (DETC) (Current Scope: The accreditation of postsecondary institutions in the United States that offer degree programs primarily by distance education up through professional doctoral degree, and are specifically certified by the agency as accredited for Title IV purposes; and for the accreditation of postsecondary institutions in the United States not participating in Title IV that offer programs primarily by distance education up through professional doctoral degrees.)

5. Midwifery Education Accreditation Council (MEAC) (Current Scope: The accreditation and pre-accreditation throughout the United States of direct-entry midwifery educational institutions and programs conferring degrees and certificates, including the accreditation of such programs offered via distance education.)

6. Montessori Accreditation Council for Teacher Education (MACTE) (Current Scope: The accreditation of Montessori teacher education institutions and programs throughout the United States, including those offered via distance education and correspondence education.)

7. Higher Learning Commission (HLC) (Current Scope: The accreditation and pre-accreditation ("Candidate for Accreditation") of degree-granting institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin,

and Wyoming, including tribal institutions, and the accreditation of programs offered via distance education within these institutions. This recognition extends to the Institutional Actions Committee jointly with the Board of Trustees of the Commission for decisions on cases for continued accreditation or reaffirmation and continued candidacy. This recognition also extends to the Review Committee of the Accreditation Review Council, jointly with the Board of Trustees of the Commission, for decisions on cases for continued accreditation or candidacy and for initial candidacy or initial accreditation when there is a consensus decision by the Review Committee.

Submission of Written Comments: Written comments must be received by September 10, 2012, in the accreditationcommittees@ed.gov and include the subject line "Written Comments: re (agency name)." The email must include the name, title, affiliation, mailing address, email address, telephone and facsimile numbers and Web site (if any) of the person/group making the comment. Comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to an electronic mail message (email) or provided in the body of an email message. Comments about an agency's compliance report must relate to the issues raised and the criteria for recognition cited in the Secretary's letter that requested the report. Comments about the renewal of an agency's recognition must relate to its compliance with the Criteria for the Recognition of Accrediting Agencies or the Criteria and Procedures for Recognition of State Agencies for Approval of Nurse Education, as appropriate, which are available at <http://www.ed.gov/admins/finaid/accred/index.html>. Third parties having concerns about agencies regarding matters outside the scope of the petition should report those concerns to the Department. Only material submitted by the deadline to the email address listed in this notice, and in accordance with these instructions, become part of the official record concerning agencies scheduled for review and are considered by the Department and the NACIQI in their deliberations. Please do not send material directly to the NACIQI members.

Submission of Requests To Make an Oral Comment: There are two methods the public may use to make a third-party oral comment of three to five minutes concerning one of the agencies scheduled for review at the December

11–12, 2012 meeting. Oral comments about agencies seeking renewal of recognition must relate to the Criteria for Recognition of Accrediting Agencies or the Criteria and Procedures for Recognition of State Agencies for Approval of Nurse Education, as appropriate, which are available at: <http://www.ed.gov/admins/finaid/accred/index.html>.

Method One: Submit a request by email to the accreditationcommittees@ed.gov. Please do not send material directly to NACIQI members. Requests must be received by September 10, 2012, and include the subject line “Oral Comment Request: re (agency name).” The email must include the name, title, affiliation, mailing address, email address, telephone and facsimile numbers and Web site (if any) of the person/group requesting to speak. All individuals or groups submitting an advance request in accordance with this notice will be afforded an opportunity to speak for a minimum of three minutes each. Each request must concern the recognition of a single agency tentatively scheduled in this notice for review, be no more than one page (maximum), and must include:

1. The name, title, affiliation, mailing address, email address, telephone and facsimile numbers, and Web site (if any) of the person/group requesting to speak; and,
2. A brief summary of the principal points to be made during the oral presentation.

Method Two: Register at the meeting location on December 11 or December 12, 2012, to make an oral comment during the NACIQI’s deliberations concerning a particular agency scheduled for review that day. The requestor must provide his or her name, title, affiliation, mailing address, email address, telephone and facsimile numbers, and Web site (if any). A total of up to fifteen minutes during each agency review will be allotted for commenters who register on December 11 or December 12, 2012. Individuals or groups will be selected on a first-come, first-served basis. If selected, each commenter may speak from three to five minutes, depending on the number of individuals or groups who signed up the day of the meeting.

If a person or group requests, in advance, to make comments they cannot also register for an oral presentation opportunity on December 11 or December 12, 2012. The oral comments made will become part of the official record and will be considered by the Department and NACIQI in their deliberations. Individuals and groups making oral presentations concerning

scheduled agencies may not distribute written materials at the meeting.

Access to Records of the Meeting: The Department will post the official report of the meeting on the NACIQI Web site shortly after the meeting. Pursuant to the FACA, the public may also inspect the materials at 1990 K Street NW., Washington, DC, by emailing aslrecordsmanager@ed.gov or by calling (202) 219–7067 to schedule an appointment.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

FOR FURTHER INFORMATION CONTACT:

Carol Griffiths, Executive Director, NACIQI, U.S. Department of Education, 1990 K Street NW., Room 8073, Washington, DC 20006–8129, telephone: (202) 219–7035, fax: (202) 219–7005, or email: Carol.Griffiths@ed.gov.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

David A. Bergeron,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–20281 Filed 8–16–12; 8:45 am]

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DEPARTMENT OF EDUCATION

National Committee on Foreign Medical Education and Accreditation

AGENCY: Office of Postsecondary Education, U.S. Department of Education, National Committee on Foreign Medical Education and Accreditation.

ACTION: The purpose of this notice is to announce the upcoming meeting of the National Committee on Foreign Medical Education and Accreditation (NCFMEA). Parts of this meeting will be open to the public, and the public is invited to attend those portions.

Meeting Date and Place: The public meeting will be held on Tuesday, October 30, 2012, from 8:30 a.m. until approximately 5:00 p.m., at the U.S. Department of Education, Eighth Floor Conference Center, Office of Postsecondary Education, 1990 K Street NW., Washington, DC 20006.

Function: The NCFMEA was established by the Secretary of Education under Section 102 of the Higher Education Act of 1965, as amended. The NCFMEA’s responsibilities are to:

- Upon request of a foreign country, evaluate the standards of accreditation applied to medical schools in that country; and
- Determine the comparability of those standards to standards for accreditation applied to United States medical schools.

Comparability of the applicable accreditation standards is an eligibility requirement for foreign medical schools to participate in the William D. Ford Federal Direct Student Loan Program, 20 U.S.C. 1087a et seq.

Meeting Agenda: The NCFMEA will review the standards of accreditation applied to medical schools by several foreign countries to determine whether those standards are comparable to the standards of accreditation applied to medical schools in the United States and/or reports previously requested of countries by the NCFMEA. Discussion of the standards of accreditation will be held in sessions open to the public. Discussions resulting in specific determinations of comparability are closed to the public in order that each country may be properly notified by the Department of the Committee’s decision.

The countries scheduled to be discussed at the meeting include Australia/New Zealand, Dominican Republic, Ireland, Israel, Mexico, Pakistan, Saba, Slovak Republic, Taiwan, and the United Kingdom. The

meeting agenda, as well as the staff analyses pertaining to the meeting will be posted on the Department of Education's Web site prior to the meeting at <http://www2.ed.gov/about/bdscomm/list/ncfmea.html>.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice by September 28, 2012, although we will attempt to meet a request received after that date.

FOR FURTHER INFORMATION CONTACT: Carol Griffiths, Executive Director for the NCFMEA, U.S. Department of Education, 1990 K Street NW., Room 8073, Washington, DC 20006-8129, telephone: 202 219-7035; fax: 202 502-7874, or email: Carol.Griffiths@ed.gov.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

David A. Bergeron,
Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2012-20282 Filed 8-16-12; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

[Docket No. PP-334]

Record of Decision for Issuing a Presidential Permit to Energia Sierra Juarez U.S. Transmission, LLC, for the Energia Sierra Juarez U.S. Transmission Line Project

AGENCY: Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy (DOE).

ACTION: Record of Decision (ROD).

SUMMARY: DOE announces its decision to issue a Presidential permit to Energia Sierra Juarez U.S. Transmission, LLC (ESJ), to construct, operate, maintain, and connect a double-circuit, 230,000-volt (230-kV) electric transmission line across the U.S.-Mexico border in eastern San Diego County, California. The potential environmental impacts associated with the transmission line are analyzed in the *Environmental Impact Statement for the Energia Sierra Juarez U.S. Transmission Line Project* (DOE/EIS-0414). The transmission line would originate at San Diego Gas and Electric's planned East County Substation (ECO Substation), and extend southward approximately 0.65 miles to the U.S. border with Mexico, near Jacumba, California, where it would cross the border and connect with a transmission line to be built in Mexico.

ADDRESSES: The Final EIS is available on the DOE NEPA Web site at <http://energy.gov/nepa/nepa-documents> and on the project Web site at <http://esjprojecteis.org/>, and the ROD will be available on both Web sites in the near future. Copies of the Final EIS and this ROD may be requested by contacting Brian Mills, Office of Electricity Delivery and Energy Reliability (OE-20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Phone (202) 586-8267, email Brian.Mills@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: For further information on the Energia Sierra Juarez U.S. Transmission Line EIS, contact Brian Mills as indicated in the **ADDRESSES** section above. For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC-54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; by email at askNEPA@hq.doe.gov; or by facsimile at 202-586-7031.

SUPPLEMENTARY INFORMATION:

Background

Executive Order (E.O.) 10485 (September 9, 1953), as amended by E.O. 12038 (February 7, 1978), requires that a Presidential permit be issued by DOE before electricity transmission facilities may be constructed, operated, maintained, or connected at the U.S. border. DOE may issue or amend a permit if it determines that the permit is in the public interest and after obtaining favorable recommendations from the U.S. Departments of State and Defense. In determining whether

issuance of a permit for a proposed action is in the public interest, DOE considers the potential environmental impacts of the proposed project, the project's impact on electricity reliability by ascertaining whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions, and any other factors that DOE considers relevant to the public interest.

On December 18, 2007, ESJ, a subsidiary of Sempra U.S. Gas and Power, applied to DOE for a Presidential permit to construct, operate, maintain, and connect either a single-circuit, 500-kV electric transmission line or a double-circuit 230-kV electric transmission line across the U.S.-Mexico border. The electric transmission line would originate at San Diego Gas and Electric's planned ECO Substation in San Diego County where it would interconnect with the Imperial Valley-Miguel segment of the Southwest Powerlink (SWPL) 500-kV transmission line. The transmission line would extend approximately 0.65 miles southward, crossing the U.S.-Mexico border near Jacumba, California, then continue approximately 1 mile (1.6 km) to an interconnection point inside Mexico. The total length of the transmission line would be approximately 1.65 miles (2.65 km), 0.65 miles of which would be within the U.S. The proposed line would be constructed and owned by ESJ.

The ESJ transmission line project would connect to the planned 1,250 Megawatt (MW) ESJ Wind Project to be located in the general vicinity of La Rumorosa, Northern Baja California, Mexico. Delivery within California of the output of ESJ wind turbines in Mexico would be scheduled by the California Independent System Operator (CAISO).

Consultation

Under Section 7 of the Endangered Species Act, DOE has completed consultation with the U.S. Fish and Wildlife Service regarding impacts on Federally-listed threatened or endangered species in the area of the proposed project. Consultation under section 106 of the National Historic Preservation Act was on-going at the time the Final EIS was issued. Since then, DOE has completed consultation with the California State Historic Preservation Officer (SHPO) regarding potential impacts on historic properties, as confirmed in a June 29, 2012, letter of concurrence by California SHPO.

NEPA Review

DOE originally considered an environmental assessment (EA) (*Baja Wind U.S. Transmission Environmental Assessment*; DOE/EA-1608) to be the appropriate level of review under NEPA. DOE published a *Notice of Intent to Prepare an Environmental Assessment and to Conduct Public Scoping Meetings* in the **Federal Register** on August 4, 2008 (73 FR 45218). In that notice DOE stated “if at any time during preparation of the EA DOE determines that an environmental impact statement (EIS) is needed * * * DOE will consider any comments on the scope of the EA received during [the EA scoping process] in preparing such an EIS.” After considering public comments on the EA, in January 2009, DOE decided to stop work on the EA and instead to prepare an EIS.

DOE published a Notice of Intent to prepare an EIS in the **Federal Register** on February 25, 2009 (74 FR 8518). The County of San Diego was a cooperating agency in the preparation of the EIS. On September 17, 2010, the U.S. Environmental Protection Agency (EPA) published a Notice of Availability of the Draft EIS in the **Federal Register** (75 FR 57005), which began a 45-day public comment period that ended on November 1, 2010. During the comment period, DOE held three public hearings on the Draft EIS. DOE considered all late comments received on the Draft EIS, including late comments received through September 2011, in the preparation of the Final EIS.

DOE revised its action alternatives in the Final EIS to reflect a new location for the planned ECO Substation. As a result, four action alternatives were analyzed in the Final EIS. In May 2012, DOE published the Final EIS (DOE/EIS-0414), and a Notice of Availability of the Final EIS was published by the EPA in the **Federal Register** on June 8, 2012 (77 FR 34041).

Alternatives Considered

In the draft EIS, DOE analyzed a No Action alternative and two action alternative routes. Under the No Action alternative (Alternative 1), DOE would not issue a Presidential permit for the proposed ESJ U.S. Transmission Line and the line would not be built. Under action alternative Alternative 2, the proposed transmission line would be constructed as a double-circuit 230-kV line, while action alternative Alternative 3 would be constructed as a single-circuit 500-kV line and would be located to the east of Alternative 2. The transmission lines analyzed in the action alternatives would be constructed

with an overhead static ground wire running above the conductors with a fiber optic core for communication between the ESJ Jacume Substation in Mexico and the planned ECO Substation in the U.S.

Following issuance of the Draft EIS, the proposed location for the ECO Substation was shifted approximately 700 feet (213 meters) east of the original proposed location in order to avoid impacts to cultural resources. Due to these changes, revised alternative routes were analyzed in the Final EIS. The revised double-circuit 230-kV transmission line route was identified as Alternative 4A (DOE's preferred alternative), and the revised single-circuit 500-kV transmission line route was identified as Alternative 4B. All action alternatives would be located wholly within private property in eastern San Diego County near the unincorporated community of Jacumba.

Analysis of Environmental Impacts

The EIS analyzes potential impacts associated with the alternatives for each of the following resource areas: biological resources, visual resources, land use, recreation, cultural resources, noise, transportation and traffic, public health and safety, fire and fuels management, air quality and climate change, water resources, geology and soils, socioeconomics, environmental justice, and services and utilities.

Implementation of the No Action alternative would not result in changes to existing conditions in the various resource areas.

i. Potential environmental impacts from the action alternatives identified in the EIS and discussed in this section are based upon ESJ's implementation of all Applicant Proposed Measures (APMs) and mitigation measures identified for each resource area in Section 2.11 of the Final EIS.

Biological Resources: All action alternatives would result in permanent disturbance to approximately 10 acres of natural vegetation and wildlife habitat. Minor temporary disturbances to wildlife and breeding birds during construction would be expected from increased noise and traffic during construction of the project. Under all action alternatives, some bird mortality could result from collisions with the transmission line even after mitigating measures are applied. No adverse effects to special status species are expected from any of the action alternatives. The information available indicates that the potential for impact on biological resources within the U.S. as a result of operation of the ESJ Wind Project in Mexico is not significant.

Visual Resources: All action alternatives would result in permanent potentially moderate-to-major, long-term adverse visual impacts due to land scarring. Views of construction equipment and activity would result in a temporary moderate adverse impact. The long-term presence of the transmission line would result in a moderate adverse impact.

Wind turbines planned for construction in Mexico as part of the ESJ Wind Project, including associated safety lighting, would be visible from several viewing points in the U.S., resulting in a potential long-term impact to individuals in the U.S.

Cultural Resources: Under all action alternatives, the construction activity would result in the potential for minor impacts to currently unknown cultural resources. ESJ has incorporated measures into its project design to eliminate potential impacts to eleven (11) known prehistoric archaeological sites in the Area of Potential Effect (APE) defined for the proposed transmission line.

Since ESJ plans to access water from the Jacumba Community Services District, a previously identified potential for impact to Site CA-SDI-4455, which is near the previously proposed water well access road, is no longer applicable.

Noise: Construction of the transmission line would result in temporary minor increases in ambient noise levels. These levels would be below the county noise ordinance at the nearest receptor site located approximately 1,600 feet west of the construction area. Operation of the transmission line would introduce a sporadic low noise as a result of the corona effect. The 230-kV configurations would result in an approximate maximum of 8.8 dBA (decibels on an A-weighted scale) at the property line. This is below the County ordinance for nighttime property line sound level limit of 45 dBA. With regard to the 500-kV route alternatives, two of the four potential conductor configurations fall below the county nighttime property line sound level limit, at 35.4 dBA and 36.8 dBA. The preferred alternative would not exceed the limits imposed by the County of San Diego's ordinance.

Transportation and Traffic: The action alternatives would result in a minor temporary increase in traffic on local roadways, a minor potential for adverse impacts to traffic safety at the project's ingress/egress, and a short-term minor potential for roadway damage from construction activities. ESJ is working with the County of San Diego to develop a traffic control plan, road

improvements, and a site entrance in accordance with the County of San Diego's traffic safety design standards.

The area near the proposed transmission lines is frequented by low-flying aircraft operated by the U.S. Border Patrol and by the California Department of Forestry and Fire Protection. The transmission line would result in a minor potential for adverse impacts to air traffic safety.

Public Health and Safety: There would be little potential to expose the public to hazardous materials or contaminated soil as a result of construction of the transmission line. Construction materials would be managed to minimize potential storm water contact, and the small amounts of potential hazardous waste would be disposed in accordance with local, state, and Federal regulations.

There are no public trails, recreation areas, or other developments to cause members of the public to linger near the transmission lines. All action alternatives incorporate grounding features in accordance with industry standards for electrical transmission structures to reduce the potential impact of induced currents and electrical field interference. The highest electromagnetic field (EMF) exposure at the nearest residence would be far below typical household levels.

Fire and Fuels Management: Construction of the transmission line would increase the potential risk associated with wildfire as a result of new ignition sources, introduction of invasive non-native plants, and the creation of a potential obstacle to firefighting. The San Diego Rural Fire Protection District has approved ESJ's Fire Protection Plan. Also, ESJ has worked with the District to agree upon methods to protect against fire.

Potential impacts to habitat and vegetation in the U.S. could result from a wildfire originating in Mexico and spreading across the U.S.-Mexico border.

Air Quality and Climate Change: Maximum emissions resulting from any of the action alternatives are estimated to be well below applicable thresholds. Temporary minor impacts from air emissions during construction and operation are expected due to minor short-term increases in criteria pollutants (organic gases, carbon monoxide, nitrogen oxides, sulfur oxides and fugitive dust).

Because it will transmit electricity generated from a renewable energy generating source (wind turbines), operation of the transmission line could facilitate a reduction in greenhouse gas emissions from other sources.

Geology and Soils: Under all action alternatives construction of the transmission line would result in a minor temporary increase in soil disturbance and erosion during construction. There is potential for long-term minor erosion impacts during operation of the proposed transmission line. Onsite soils have a high potential to corrode steel, but potential impacts of corrosion on operation of the transmission line would be minor.

During operations there would be a minor potential for structural damage or failure as a result of seismic ground-shaking. However, the transmission line and overhead structures are designed to exceed earthquake loads, resulting in minimal potential for damage. No impacts related to soil liquefaction or slope instability are anticipated.

The Environmentally Preferred Alternative

DOE has determined that there are no discernible differences in the environmental impacts of the action alternatives. Because DOE's preferred 230-kV alternative would employ slightly smaller towers, thereby minimizing the overall footprint of the proposed project, Alternative 4A is identified as the environmentally preferred alternative.

Comments Received on the Final EIS

Comments on the Final EIS were received from EPA Region IX on June 27, 2012, and from Stephen C. Volker attorney for Backcountry Against Dumps, the Protect Our Communities Foundation, East County Community Action Coalition, and Donna Tisdale (Collectively, "Community Groups") on July 10, 2012. Comments received on the Final EIS are available on the project Web site identified above.

The EPA Region IX comments on the Final EIS acknowledge DOE's responses to EPA's comments on the Draft EIS and raise no new issues. EPA states its appreciation for information added to the Final EIS that supports environmentally preferable outcomes.

The Community Groups' comments reiterate the Community Groups November 2010 comments on the Draft EIS. The comments and DOE responses are identified as 401-1 through 401-17 in the Final EIS Comment and Response Document (Volume 3). The Community Group disagrees with the DOE responses. DOE affirms its previous responses to comments 401-1 through 401-17.

Decision

DOE has decided to issue Presidential Permit PP-334 to authorize ESJ to

construct, operate, maintain, and connect a Double-Circuit 230-kV transmission line across the U.S. border. This action, Alternative 4A, is identified as DOE's preferred alternative in the EIS. The permit will include a condition requiring ESJ to implement mitigation measures identified in the EIS.

Before granting a Presidential permit, DOE must determine if a proposed international electric transmission line would have an adverse impact on the reliability of the U.S. electric power supply system. In reaching this determination, DOE considers the operation of the electrical grid with a specified maximum amount of electric power transmitted over the proposed line.

DOE reviewed the generation interconnection studies conducted by CAISO for the first phase of the ESJ planned wind generation facility currently in the CAISO interconnection queue to connect to the U.S. grid. These studies are available on the project Web site.

CAISO completed the study for the first phase of 400 MW of wind generation and executed an interconnection agreement with ESJ U.S. Transmission (Standard Large Generator Interconnection Agreement (LGIA)—ESJ Wind (Queue No. 159A), CAISO, October 26, 2011). The studies for the second and third phases of the planned ESJ wind generation have not been completed.

Mitigation

Avoidance and minimization of potential environmental impacts was a consideration in the identification and selection of the preferred alternative. The alignment of DOE's preferred alternative avoids some cultural resources potentially affected by Alternatives 2 and 3. DOE's Presidential permit will contain a condition that requires ESJ to implement project-specific mitigation measures and protective measures proposed by the Applicant (APMs) that are identified in the Final EIS. With the implementation of the preferred alternative and inclusion of the mitigation measures, DOE has employed all practicable means to avoid or minimize environmental harm from the design, construction and operation of the preferred alternative.

Basis for Decision

In arriving at its decision, DOE has considered the potential environmental impacts of the proposed project, the project's impact on electricity reliability by ascertaining whether the proposed project would adversely affect the

operation of the U.S. electric power supply system under normal and contingency conditions, and any other factors that DOE may consider relevant to the public interest.

DOE has determined that the potential impacts from the Route for the Double-Circuit 230-kV Transmission Line are expected to be small, as discussed above.

For the reasons stated above, DOE will issue Presidential Permit PP-334 to authorize ESJ to construct, operate, maintain, and connect the Energia Sierra Juarez U.S. Double-Circuit 230-kV Transmission Line across the U.S. border. Presidential Permit PP-334 will limit the project to a maximum of 400 MW.

Issued in Washington, DC, on August 13, 2012.

Patricia A. Hoffman,

Assistant Secretary of Energy Electricity, Delivery and Energy Reliability.

[FR Doc. 2012-20234 Filed 8-16-12; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9004-5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7146 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements Filed 08/06/2012 Through 08/10/2012

Pursuant to 40 CFR 1506.9

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <http://www.epa.gov/compliance/nepa/eisdata.html>.

SUPPLEMENTARY INFORMATION: Starting October 1, 2012, EPA will not accept paper copies or CDs of EISs for filing purposes; all submissions on or after October 1, 2012 must be made through e-NEPA. While this system eliminates the need to submit paper or CD copies to EPA to meet filing requirements, electronic submission does not change requirements for distribution of EISs for public review and comment. To begin using e-NEPA, you must first register with EPA's electronic reporting site—https://cdx.epa.gov/epa_home.asp.

EIS No. 20120264, Final EIS, USFS, CA, On Top Hazardous Fuels Reduction

Project, To Disclose the Environmental Effects of a Federal Proposal on National Forest System (NFS) Land, Plumas National Forest, Feather River Ranger District, Plumas, Butte Counties, CA, Review Period Ends: 09/17/2012, Contact: Carol Spinos 530-534-6500.

EIS No. 20120265, Draft EIS, FHWA, MT, Billings Bypass Improvements, Connecting Interstate 90 (I-90) east of Billings with Old Highway (Old Hwy 312), Possible USACE Section 10 and 404 Permits, Yellowstone County, MT, Comment Period Ends: 10/01/2012, Contact: Brian Hasselbach 406-441-3908.

EIS No. 20120266, Draft EIS, USFS, CO, Village at Wolf Creek Access Project, Conveyance of Non-Federal Land to the U.S. in Exchange for National Forest System Lands Managed by the Rio Grande National Forest, Mineral County, CO, Comment Period Ends: 10/01/2012, Contact: Harold Dyer 719-852-6215.

EIS No. 20120267, Draft EIS, USN, VA, Outdoor Research, Development, Test and Evaluation Activities within the Potomac River Test Range and Explosives Experimental Area Complexes, the Mission Area and Special-Use Airspace at Naval Support Facility Dahlgren, Expansion, Dahlgren, VA, Comment Period Ends: 10/01/2012, Contact: Jennifer Boyd 540-653-8695.

Amended Notices

EIS No. 20120184, Draft EIS, NOAA, 00, Issuing Annual Quotas to the Alaska Eskimo Whaling Commission (AEWC) for a Subsistence Hunt on Bowhead Whales for the Years 2013 through 2017/2018, Comment Period Ends: 08/31/2012, Contact: Ellen Sebastian 907-586-7247. Revision to FR Notice Published 06/15/2012; Extending Comment Period from 08/14/2012 to 08/31/2012.

EIS No. 20120197, Draft EIS, USFS, ID, Golden Hand No. 1 and No. 2 Lode Mining Claims Project, Krassel Ranger District, Payette National Forest, Valley and Idaho Counties, ID, Comment Period Ends: 08/13/2012, Contact: Jeff Huntzman 208-634-0434. Revision to FR Notice Published 06/29/2012; Extending Comments Period from 08/13/2012 to 09/17/2012.

EIS No. 20120263, Final EIS, USFS, CA, Barren Ridge Renewable Transmission Project, Construct, Operate, Maintain, and Upgrade 220kV Electrical Transmission Lines and Switching Stations, Kern and Los Angeles Counties, CA, Review Period Ends: 09/10/2012, Contact: Justin

Seastrand 626-574-5278(AFS), Lynette Elser 951-697-5233(BLM).

Revision to FR Notice Published 08/10/2012; Review Period ends 09/10/2012. More information on the U.S. Forest Service's appeal process is available at <http://www.ladwp.com/barrenridge>.

Dated: July 14, 2012.

Aimee Hessert,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012-20248 Filed 8-16-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2012-0442; FRL-9356-5]

FIFRA Pesticide Registration Review and ESA Consultation Processes; Proposal Regarding Stakeholder Input; Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is seeking public comment on a proposal to enhance opportunities for stakeholders to provide input during its review of pesticide registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and associated consultations under Section 7 of the Endangered Species Act (ESA). The proposal was jointly prepared by EPA, the U.S. Department of Agriculture (USDA), the National Marine Fisheries Service (NMFS) in the U.S. Department of Commerce and the Fish and Wildlife Service (USFWS) in the U.S. Department of Interior. The proposal describes significant changes to EPA's registration review process which are intended to facilitate ESA pesticide consultations and coordination across these Federal agencies, and calls for a greater role for USDA.

DATES: Comments must be received on or before October 16, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2012-0442, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200

Pennsylvania Ave. NW., Washington, DC 20460-0001.

• **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.htm>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Richard P. Keigwin, Jr., Pesticide Re-evaluation Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (703) 308-8000; fax number: (703) 308-8005; email address: keigwin.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What action is the Agency taking?

EPA is taking public comment on a document entitled, "Proposal for Enhancing Stakeholder Input in the Pesticide Registration Review and ESA Consultation Processes and Development of Economically and Technologically Feasible Reasonable and Prudent Alternatives," a copy of which is available in the docket at <http://www.regulations.gov> under docket ID number EPA-HQ-OPP-2012-0442. The document describes proposed changes to EPA's pesticide registration review program and how it conducts consultation with the Services under Section 7 of the ESA.

II. Why is the Agency taking this action?

In an effort to be responsive to stakeholders' desires for a mechanism to get information into the registration review process as early as possible, EPA proposes to hold "Focus" meetings at the start of registration review for each active ingredient. In response to stakeholders' desires for a more open, reliable, and transparent pesticide consultation process, EPA proposes to initiate any needed formal ESA consultations at a later stage in the review process. Consulting later in the registration review process allows EPA to develop more refined ecological risk assessments and to engage affected stakeholders in discussions that should result in more focused consultation packages inclusive of mitigation for listed species. There is an emerging consensus that EPA and the Services should engage informally and early in the consultation process, but that formal consultation should be reserved until EPA's ecological risk assessment and

proposed decision are more fully formed. This approach has the potential to maximize the opportunity to effect changes that provide protections for species and their designated critical habitat, lessen the impacts on agriculture, and narrow the scope of the Federal action.

Additionally, the proposal describes EPA's plans to reach out to pesticide users potentially affected to discuss the technological and economic feasibility of "Reasonable and Prudent Alternatives" (RPAs) intended to avoid jeopardy to threatened and/or endangered species. The USDA's relationships with the agricultural community provide a critical link between EPA's expertise on pesticides and the Services' expertise on listed species' locations, status and biology.

Finally, the proposal describes the process by which public comments received on RPAs will be summarized and organized by EPA and provided to the Services, who will prepare a document to be included in the administrative record of the consultation explaining how comments were considered, and if appropriate, how the final biological opinion was modified to address the comments. The Services will provide the document to EPA, and both the Services and EPA will make the document available to the public upon request. These process changes are intended to provide clarity and transparency to the ESA Section 7 consultation process for pesticides.

EPA and the departments of Agriculture, Commerce, and Interior are taking this action because many stakeholders have expressed concerns regarding the apparent lack of transparency surrounding ESA consultations on pesticide registration review decisions, and the need for increased access to the decision-making process by states and other stakeholders for the purpose of providing relevant data for consideration during registration review and accompanying ESA consultation. Increasing public participation opportunities during both the registration review and accompanying ESA consultation processes, and improving clarity and transparency during these processes are important goals of this action.

In the interest of facilitating discussion and providing clarification on the process changes described in the proposal, EPA and the departments of Agriculture, Commerce, and Interior are willing to meet with affected stakeholders. Individuals and/or organizations wanting to meet with the agencies to discuss this proposal should submit a request to the docket.

List of Subjects

Environmental protection, Endangered species, Pesticides and pests, Threatened species.

Dated: August 3, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2012-20237 Filed 8-16-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2012-0570; FRL-9358-4]

Ortho-Phthalaldehyde; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the National Aeronautics and Space Administration (NASA) to use the pesticide ortho-phthalaldehyde (OPA) (CAS No. 643-79-8) to treat the International Space Station internal active thermal control system (IATCS) coolant to control *Cupriavidus metallidurans*, *Variovorax paradoxus*, *Acidovorax* sp., *Sphingomonas parapaucimobilis*, *Stenotrophomonas maltophilia*, *Methylobacterium extorquens*, and unidentified gram negative rods. This emergency exemption involves the use of a chemical which has not been registered by the EPA. EPA is soliciting public comment on the exemption.

DATES: Comments must be received on or before September 4, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2012-0570, by one of the following methods:

• **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

• **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.htm>. Additional instructions on commenting or visiting the docket, along with more

information about dockets generally, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Debra Rate, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (703) 306-0309; fax number: (703) 605-0781; email address: rate.debra@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are a pesticide manufacturer (NAICS code 32532) or involved with the International Space Station. This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What action is the agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. NASA has requested the Administrator to issue a specific exemption for the use of OPA in the International Space Station IATCS coolant to control *Cupriavidus metallidurans*, *Variovorax paradoxus*, *Acidovorax* sp., *Sphingomonas parapaucimobilis*, *Stenotrophomonas maltophilia*, *Methylobacterium extorquens*, and unidentified gram negative rods. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that OPA is the most effective biocide which meets the requisite IATCS criteria, including: the need for safe, non-intrusive implementation and operation in a functioning system; the

ability to control existing planktonic and biofilm residing micro-organisms; a negligible impact on system-wetted materials of construction; and a negligible reactivity with existing coolant additives. Non-use of OPA in the requested manner would leave NASA's International Space Station without an adequate long-term solution for controlling the micro-organisms in the coolant systems.

The Applicant proposes to make no more than one application of OPA per module in the International Space Station IATCS coolant including the U.S. Laboratory, the Japanese Experiment Module, the Columbus and Node with a total treated coolant volume not to exceed 829 Liters with a maximum of 1,974 cubic centimeters (cm³) OPA resin.

The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by EPA. The notice provides an opportunity for public comment on the application. Owing to the long lead time necessary for sending products to the International Space Station, EPA has evaluated NASA's application in advance of seeking public comment, and has concluded that the emergency exemption should be approved. Although EPA has approved this emergency exemption, EPA still welcomes public comment. EPA's regulations provide that an emergency exemption may be modified or revoked if, among other things, additional information indicates that the product may cause unreasonable adverse effects or may not be effective at controlling the target pests. Accordingly, the Agency will review and consider all comments received during the comment period in determining whether the specific exemption should be modified or revoked.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 3, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012-19953 Filed 8-16-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9717-9]

Notice of Administrative Settlement Agreement for Recovery of Past Response Costs Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended**AGENCY:** Environmental Protection Agency.**ACTION:** Notice; Request for Public Comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), notice is hereby given that a proposed administrative settlement agreement for recovery of past response costs ("Proposed Agreement") associated with Hamburg Mill Creek Superfund Site, Berks County, Pennsylvania was executed by the Environmental Protection Agency ("EPA") and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the Proposed Agreement is inappropriate, improper, or inadequate. The Proposed Agreement would resolve potential EPA claims under Section 107(a) of CERCLA, against Weis Markets Inc. ("Settling Party"). The Proposed Agreement would require Settling Party to reimburse EPA \$30,000.00 for past response costs incurred by EPA for the Site.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the Proposed Agreement. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before thirty (30) days after the date of publication of this notice.

ADDRESSES: The Proposed Agreement and additional background information relating to the Proposed Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Proposed Agreement may be obtained from Jefferie E. Garcia (3RC42), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the "Hamburg Mill Creek Superfund Site, Proposed Administrative Settlement

Agreement for Recovery of Past Response Costs" and "EPA Docket No. CERCLA-03-2012-0154CR," and should be forwarded to Jefferie E. Garcia at the above address.

FOR FURTHER INFORMATION CONTACT:

Jefferie E. Garcia (3RC42), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814-2697; garcia.jefferie@epa.gov.

Dated: August 8, 2012.

Ronald Borsellino,

Director, Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III.

[FR Doc. 2012-20276 Filed 8-16-12; 8:45 am]

BILLING CODE P**FEDERAL DEPOSIT INSURANCE CORPORATION****Sunshine Act Meeting**

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:01 a.m. on Tuesday, August 14, 2012, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Director Thomas M. Hoenig (Appointive), seconded by Director Jeremiah O. Norton (Appointive), concurred in by Director Thomas J. Curry (Comptroller of the Currency), Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Acting Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street NW., Washington, DC.

Dated: August 14, 2012.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.

[FR Doc. 2012-20286 Filed 8-15-12; 11:15 am]

BILLING CODE P**FEDERAL RESERVE SYSTEM****Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 31, 2012.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *Steven A. Bartels and Deborah E. Bartels*, both of Franklin, Nebraska; to acquire voting shares of New Richmond Bancorporation, New Richmond, Ohio, and thereby indirectly acquire voting shares of Riverhills Bank, Milford, Ohio.

Board of Governors of the Federal Reserve System, August 13, 2012.

Robert deV. Frierson,
Secretary of the Board.

[FR Doc. 2012-20165 Filed 8-16-12; 8:45 am]

BILLING CODE 6210-01-P**FEDERAL RESERVE SYSTEM****Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 10, 2012.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166-2034:

1. *Reliable Community Bancshares, Inc.*, Perryville, Missouri; to acquire 100 percent of the voting shares of First Southeast Missouri Bancorporation, Inc., Scott City, Missouri, and thereby indirectly acquire voting shares of Security Bank and Trust Company, Scott City, Missouri.

In connection with this application First Southeast Acquisition Corporation, Perryville, Missouri; has applied to become a bank holding company by acquiring 100 percent of the voting shares of First Southeast Missouri Bancorporation, Inc., and thereby indirectly acquire Security Bank and Trust Company, both in Scott City, Missouri.

Board of Governors of the Federal Reserve System, August 13, 2012.

Robert deV. Frierson,
Secretary of the Board.

[FR Doc. 2012-20166 Filed 8-16-12; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the

assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 13, 2012.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *HaleCo Bancshares, Inc.*, Plainview, Texas; to acquire 100 percent of the voting shares of LubCo Bancshares, Inc., and thereby indirectly acquire Citizens Bank, both in Slaton, Texas.

Board of Governors of the Federal Reserve System, August 14, 2012.

Margaret McCloskey Shanks,
Associate Secretary of the Board.

[FR Doc. 2012-20210 Filed 8-16-12; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-12-12QC]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the

proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-7570 and send comments to Kimberly S. Lane, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an email to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Costs and Cost Savings of Motor Vehicle Injury Prevention: Evidence-Based Policy and Behavioral Interventions—NEW—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Motor vehicle injuries are the leading cause of death for children, adolescents, and young adults, and a major cause of death for all other ages. In 2009, 33,808 people were killed in crashes in the United States and more than 2.2 million people were injured. Medical costs and productivity losses associated with traffic injuries amounted to more than \$99 billion in 2005; equivalent to about \$500 for each U.S. licensed driver. Due to the magnitude of this injury problem and the availability of evidence-based policies and interventions to prevent it, motor vehicle injury prevention has been designated as one of the CDC's Winnable Battles.

CDC requests OMB approval to support research needed to reduce the number of motor vehicle injuries and fatalities. This project is designed to support state and local communities in making evidence-based resource allocation decisions relating to the implementation of motor vehicle injury prevention policies and programs. This will be done by generating estimates of the cost of implementing a set of evidence-based interventions. By combining these estimates with existing data on the effect of each intervention and cost of motor vehicle injuries, an interactive, user-friendly tool will be

created that states can use to assess the costs and benefits of different interventions designed to prevent motor vehicle injuries. The resulting tool should help states understand the tradeoffs and prioritize high-impact interventions to reduce motor vehicle injuries.

Key informant interviews will be used to fill gaps in knowledge for interventions that do not have extensive literature on their costs and benefits. Information will be collected from Public safety advocacy groups, DWI/DUI defense attorneys, State Departments of

Public Safety (members of the Governors Highway Safety Association), State Parole Agencies, and Local Law Enforcement Agencies. Online expert panel meetings will provide the background information needed to understand how to successfully build an online tool that can be used to generate a variety of state-specific and cost-benefit analyses, including point estimates and uncertainty intervals for costs and benefits. The tool will account for different levels of implementation for each intervention and for interdependencies among pairs of

specific interventions. The tool will provide state and local policymakers with an optimal portfolio or package of selected interventions that are expected to produce the highest benefit for a specified implementation budget. The integrated, data-driven tool will facilitate effective planning and policymaking at the state and local levels by providing policymakers with a rigorous analysis of the costs and benefits of various options for reducing motor vehicle injuries and fatalities.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden hours
Public Safety Advocacy Groups	Semi-Structured Interviews—(Attachment C).	4	1	1	4
DWI/DUI Defense Attorneys	Semi-Structured Interviews—(Attachment D).	4	1	1	4
Court Case Managers	Semi-Structured Interviews—(Attachment E).	4	1	1	4
State Parole Agencies	Semi-Structured Interviews—(Attachment F).	2	1	1	2
State Depts. of Public Safety	Semi-Structured Interviews—(Attachment G).	6	1	1	6
Local Law Enforcement	Semi-Structured Interviews—(Attachment H).	4	1	1	4
Academic Researchers	Discussion Guide—Online Expert Panel—(Attachment I).	3	1	1	3
CDC Staff	Discussion Guide—Online Expert Panel—(Attachment I).	3	1	1	3
NHTSA Staff	Discussion Guide—Online Expert Panel—(Attachment I).	2	1	1	2
Total .....	.....	.....	.....	.....	32

Kimberly S. Lane,

Deputy Director, Office of Scientific Integrity,
Office of the Associate Director for Science,
Office of the Director, Centers for Disease
Control and Prevention.

[FR Doc. 2012–20218 Filed 8–16–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–12–12EX]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these

requests, call the CDC Reports Clearance Officer at (404) 639–7570 or send an email to omb@cdc.gov. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Formative Research for the Development of CDC's Act Against AIDS Social Marketing Campaigns Targeting Consumers—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this study is to conduct interviews and focus groups in four rounds of data collections (exploratory research, message testing, concept testing, materials testing) with consumer groups aged 18 to 64 over a

3-year period to develop various social marketing campaigns aimed at increasing HIV testing rates, increasing HIV awareness and knowledge, challenging commonly held misperceptions about HIV, and promoting HIV prevention and risk reduction. The research results will be used to develop materials for six specific HIV social marketing campaigns under the umbrella of the larger *Act Against AIDS* campaign. The target audience for the campaigns include the following populations, all ages 18–64 years old: (1) General U.S. population, with an emphasis on African Americans and Latinos; (2) men who have sex with men (MSM), with an emphasis on Latino MSM; and (3) HIV+ individuals.

The study will screen 2338 people per year for eligibility. Of the 2338 people screened, it is expected that 500 people will participate in focus groups, 500 people will participate in in-depth interviews and 700 will participate in intercept interviews. All focus group

and in-depth interview participants (total 1000) will complete a brief paper

and pencil survey. The total estimated annual burden hours are 2311.

There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Individuals (males and females) aged 18–64	Study screener	2338	1	2/60
Individuals (males and females) aged 18–64	In-Depth Interview Guide	500	1	1
Individuals (males and females) aged 18–64	Focus Group Guide	500	1	2
Individuals (males and females) aged 18–64	Paper and Pencil Survey	1000	1	30/60
Individuals (males and females) aged 18–64	Intercept Interview Guide	700	1	20/60

Kimberly S. Lane,

*Deputy Director, Office of Science Integrity,
Office of the Associate Director for Science,
Office of the Director, Centers for Disease
Control and Prevention.*

[FR Doc. 2012–20213 Filed 8–16–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–12QR]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Kimberly S. Lane, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should

be received within 60 days of this notice.

Proposed Project

Monitoring And Reporting System For DELTA FOCUS Awardees—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Intimate Partner Violence (IPV) is a serious, preventable public health problem that affects millions of Americans and results in serious consequences for victims, families, and communities. IPV occurs between two people in a close relationship. The term “intimate partner” describes physical, sexual, or psychological harm by a current or former partner or spouse. IPV can impact health in many ways, including long-term health problems, emotional impacts, and links to negative health behaviors. IPV exists along a continuum from a single episode of violence to ongoing battering; many victims do not report IPV to police, friends, or family.

Research indicates that on average, 24 people per minute are victims of rape, physical violence, or stalking by an intimate partner in the United States. Over the course of one year, more than 12 million women and men reported being a victim of rape, physical violence, or stalking by an intimate partner. Also, on average nearly three women are murdered each day by an intimate partner. In 2007, IPV resulted in more than 2,300 deaths. Of these deaths, 30 percent were men and 70 percent were women. The medical care, mental health services, and lost productivity (e.g., time away from work) cost of IPV is estimated at \$8.3 billion per year.

The objective of primary prevention is to stop IPV before it occurs. In 2002, authorized by the Family Violence Prevention Services Act (FVPSA), CDC developed the Domestic Violence Prevention Enhancements and

Leadership Through Alliances (DELTA) Program, with a focus on the primary prevention of IPV. The CDC funded DELTA Program provides funding to state domestic violence coalitions (SDVCs) to engage in statewide primary prevention efforts and to provide training, technical assistance, and financial support to local communities for local primary prevention efforts. DELTA FOCUS (Domestic Violence Prevention Enhancement and Leadership Through Alliances, Focusing on Outcomes for Communities United with States) builds on that history by providing focused funding to states and communities for intensive implementation and evaluation of IPV primary prevention strategies that address the structural determinants of health at the societal and community levels of the social-ecological model (SEM).

By emphasizing primary prevention, the DELTA FOCUS program will support comprehensive and coordinated approaches to IPV prevention. The strategies will address the structural determinants of health at the outer layers (societal and community) of the SEM that coordinate and align with existing prevention strategies at the inner layers of the SEM. This program addresses the “Healthy People 2020” focus area(s) of Injury and Violence Prevention and Social Determinants of Health.

Information will be collected from the 12 DELTA FOCUS awardees through an electronic Performance Management Information System (PMIS). The PMIS will collect information about the staffing resources dedicated by each awardee, as well as partnerships with external organizations. Information collected through the PMIS will be used to inform performance monitoring and program evaluation. Information will also be used to respond to requests from the National Center for Injury Prevention and Control, Department of Health and Human Services, White House, Congress, and other sources.

DELTA FOCUS awardees will use the information collection to manage and coordinate their activities and to improve their efforts to prevent IPV.

The PMIS will collect a limited amount of information in identifiable form (IIF) for key program staff (e.g., Executive Director). Only names and professional contact information will be

collected, limiting the potential negative impact this data collection might have on the privacy of respondents. No personal contact information will be collected. All respondents will be state and territorial domestic violence coalitions. The time commitments for data entry and training are greatest

during the initial population of the PMIS, typically in the first six months of funding. Estimated burden for the first-time population of the PMIS is fifteen hours. Semi-Annual Reporting is estimated at three hours per respondent.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TO RESPONDENTS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response in hours	Total burden (in hours)
State and/or Territorial Domestic Violence Coalitions.	DELTA FOCUS PMIS: Initial population.	12	1	15	180
	DELTA FOCUS PMIS: Semi-annual reporting.	12	2	3	72
Total .....	.....	.....	.....	.....	252

Kimberly S. Lane,

*Deputy Director, Office of Scientific Integrity,
Office of the Associate Director for Science,
Office of the Director, Centers for Disease
Control and Prevention.*

[FR Doc. 2012–20211 Filed 8–16–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9074–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—April Through June 2012

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists CMS manual instructions, substantive

and interpretive regulations, and other **Federal Register** notices that were published from April through June 2012, relating to the Medicare and Medicaid programs and other programs administered by CMS.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning each of the addenda published in this notice.

Addenda	Contact	Phone No.
I CMS Manual Instructions	Ismael Torres	(410) 786–1864
II Regulation Documents Published in the Federal Register	Terri Plumb	(410) 786–4481
III CMS Rulings	Tiffany Lafferty	(410) 786–7548
IV Medicare National Coverage Determinations	Wanda Belle	(410) 786–7491
V FDA-Approved Category B IDEs	John Manlove	(410) 786–6877
VI Collections of Information	Mitch Bryman	(410) 786–5258
VII Medicare-Approved Carotid Stent Facilities	Sarah J. McClain	(410) 786–2294
VIII American College of Cardiology-National Cardiovascular Data Registry Sites.	JoAnna Baldwin, MS	(410) 786–7205
IX Medicare's Active Coverage-Related Guidance Documents.	Lori Ashby	(410) 786–6322
X One-time Notices Regarding National Coverage Provisions	Lori Ashby	(410) 786–6322
XI National Oncologic Positron Emission Tomography Registry Sites.	Stuart Caplan, RN, MAS	(410) 786–8564
XII Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities.	JoAnna Baldwin, MS	(410) 786–7205
XIII Medicare-Approved Lung Volume Reduction Surgery Facilities.	JoAnna Baldwin, MS	(410) 786–7205
XIV Medicare-Approved Bariatric Surgery Facilities	Kate Tillman, RN, MAS	(410) 786–9252
XV Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials.	Stuart Caplan, RN, MAS	(410) 786–8564
All Other Information	Annette Brewer	(410) 786–6580

I. Background

Among other things, the Centers for Medicare & Medicaid Services (CMS) is

responsible for administering the Medicare and Medicaid programs and coordination and oversight of private

health insurance. Administration and oversight of these programs involves the following: (1) Furnishing information to

Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, State governments, State Medicaid agencies, State survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National Association of Insurance Commissioners (NAIC), health insurers, and other stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Revised Format for the Quarterly Issuance Notices

While we are publishing the quarterly notice required by section 1871(c) of the Act, we will no longer republish duplicative information that is available to the public elsewhere. We believe this

approach is in alignment with CMS' commitment to the general principles of the President's Executive Order 13563 released January 2011 entitled "Improving Regulation and Regulatory Review," which promotes modifying and streamlining an agency's regulatory program to be more effective in achieving regulatory objectives. Section 6 of Executive Order 13563 requires agencies to identify regulations that may be "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand or repeal them in accordance with what has been learned." This approach is also in alignment with the President's Open Government and Transparency Initiative that establishes a system of transparency, public participation, and collaboration.

Therefore, this quarterly notice provides only the specific updates that have occurred in the 3-month period along with a hyperlink to the full listing that is available on the CMS Web site or the appropriate data registries that are used as our resources. This information is the most current up-to-date information and will be available earlier than we publish our quarterly notice. We believe the Web site list provides more timely access for beneficiaries, providers, and suppliers. We also believe the Web site offers a more convenient tool for the public to find the full list of qualified providers for

these specific services and offers more flexibility and "real time" accessibility. In addition, many of the Web sites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the Web site. These listservs avoid the need to check the Web site, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a Web site proves to be difficult, the contact person listed can provide information.

III. How To Use the Notice

This notice is organized into 15 addenda so that a reader may access the subjects published during the quarter covered by the notice to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at <http://www.cms.gov/manuals>.

Authority: Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program.

Dated: August 8, 2012.

Kathleen Cantwell,
Acting Director, Office of Strategic Operations and Regulatory Affairs.

BILLING CODE 4120-01-P

Publication Dates for the Previous Four Quarterly Notices

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are:

November 4, 2011 (76 FR 68467), December 16, 2011 (76 FR 78267), February 21, 2012 (77 FR 9931) and May 18, 2012 (77 FR 29648). For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the Website to access this information and a contact person for questions or additional information.

Addendum I: Medicare and Medicaid Manual Instructions (April through June 2012)

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency's official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Those wishing to subscribe to old versions of CMS manuals should contact the National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312 Telephone (703-605-6050). You can download copies of the listed material free of charge at: <http://cms.gov/manuals>.

How to Review Transmittals or Program Memoranda

Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400

designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at <http://www.gpo.gov/libraries/>

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the Medicare Benefit Policy publication titled Allowing Physician Assistants to Perform Skilled Nursing Facility (SNF) Level of Care Certifications and Recertifications use CMS-Pub. 100-02, Transmittal No. 155.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual. For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our Website at www.cms.gov/Manuals.

Transmittal Number	Manual/Subject/Publication Number
Medicare General Information (CMS-Pub. 100-01)	
78	October 2012 Quarterly Updates to the CMS Standard File for Reason Codes for the Fiscal Intermediary Shared System (FISS)
Medicare Benefit Policy (CMS-Pub. 100-02)	
155	Allowing Physician Assistants to Perform Skilled Nursing Facility (SNF) Level of Care Certifications and Recertifications
156	Updates to Caps and Limitations on Hospice Payments Caps and Limitations on Hospice Payments Limitation on Payments for Inpatient Care Aggregate Cap on Overall Reimbursement to Medicare-certified Hospices Actual Medicare Payments Counted New Hospices Counting Beneficiaries for Calculation Changing Aggregate Cap Calculation Methods Other Issues

2453	Outpatient Setting CY 2012 OPPS Payment Adjustment for Certain Cancer Hospitals Payment Adjustment for Certain Cancer Hospitals Payment Adjustment for Certain Cancer Hospitals for CY 2012 Transitional Outpatient Payments (TOPs) for CY 2010 through February 29, 2012
2454	Contractor and Common Working File (CWF) Additional Instructions Related to Change Request (CR) 7033 - Screening and Behavioral Counseling Interventions in Primary Care to Reduce Alcohol Misuse Claim Adjustment Reason Codes, Remittance Advice Remark Codes, Group Codes, and Medicare Summary Notice Messages Additional CWF and Contractor Requirements
2455	Hospital Dialysis Services for Patients with and without End Stage Renal Disease (ESRD)
2456	Issued to a specific audience, not posted to Internet/Intranet/ due to Confidentiality of Instruction
2457	Revisions of the Financial Limitation for Outpatient Therapy Services - Section 3005 of the Middle Class Tax Relief and Job Creation Act of 2012 Application of Financial Limitations Claims Processing Requirements for Financial Limitations Notification for Beneficiaries Exceeding Financial Limitations
2458	Systematic Validation of Payment Group Codes for Prospective Payment Systems (PPS) Based on Patient Assessments
2459	Systematic Validation of Claims Information Using Patient Assessments Issued to a specific audience, not posted to Internet/Intranet/ due to Confidentiality of Instruction
2460	Issued to a specific audience, not posted to Internet/Intranet/ due to Confidentiality of Instruction
2461	Automated Tracking and Reporting of Recovery Audit-Associated Recoupings and Appeals
2462	New Physician Specialty Code for Sleep Medicine and Sports Medicine Physician Specialty Codes
2463	New Fiscal Intermediary Shared System (FISS) Edit to Review Medicare Outpatient Prospective Payment System (OPPS) Payments Exceeding Charges. Verification Edit for Claims with OPPS Payments
2464	Enhance the Multi-Carrier System (MCS) and VIPS Medicare System (VMS) to maintain five full years of pricing data and to automatically price claims/adjustments at the rates in effect at the dates of service. Update Factor for Fee Schedule Services Online Pricing Files for DMEPOS
2465	Assigned Codes for Home Oxygen Use for Cluster Headache (CH) in a Clinical Trial (ICD-10) Oxygen and Oxygen Equipment
2466	Calendar Year 2013 and After Payments to Home Health Agencies That Do Not Submit Required Quality Data
2467	July Quarterly Update for 2012 Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Fee Schedule
2468	July 2012 Integrated Outpatient Code Editor (IOCE) Specifications Version 13.2

157	Updates to the Cap Amount Administrative Appeals July 2012 Update of the Hospital Outpatient Prospective Payment System (OPPS) Outpatient Hospital Services Determining Self-Administration of Drug or Biological Medicare National Coverage Determination (CMS-Pub. 100-03) Medicare Claims Processing (CMS-Pub. 100-04)
143	Extracorporeal Shock Wave Therapy (ICD-10) Extracorporeal Shock Wave Therapy Pharmacy Billing for Drugs Provided "Incident To" a Physician Service This CR rescinds and fully replaces CR 7109.
2437	Revised Editing for Hepatitis B Administration Code G0010 Healthcare Common Procedure Coding System (HCPCS) and Diagnosis Codes
2438	New Waived Tests
2439	July 2012 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing Files and Revisions to Prior Quarterly Pricing Files
2440	Healthcare Common Procedure Coding System (HCPCS) Codes Subject to and Excluded from Clinical Laboratory Improvement Amendments (CLIA) Edits
2441	Claim Adjustment Reason Code (CARC), Remittance Advice Remark Code (RARC), and Medicare Remit Easy Print (MREP) and PC Print Update Clinical Laboratory Fee Schedule - New Waived Tests
2442	Issued to a specific audience, not posted to Internet/Intranet/ due to Confidentiality of Instruction
2443	Issued to a specific audience, not posted to Internet/Intranet/ due to Confidentiality of Instruction
2444	New Influenza Virus Vaccine Code Table of Preventive and Screening Services
2445	Healthcare Common Procedure Coding System (HCPCS) and Diagnosis Codes CWF Edits on FI/AB MAC Claims CWF Edits on Carrier/AB MAC Claims
2446	CWF A/B Crossover Edits for FI/AB MAC and Carrier/AB MAC Claims Additional Fields Added to the Outlier Reconciliation Lump Sum Utility Procedure for Medicare Contractors to Perform and Record Outlier Reconciliation Adjustments
2447	Medicare System Update to Include Claim Level Referring Physician Data and Insuring Hospice Certifying Physician Identifiers Are Fully Processed Completing the Uniform (Institutional Provider) Bill (Form CMS 1450) for Hospice Election Data Required on the Institutional Claim to Medicare Contractor
2448	Modification to CWF, FISS, MCS and VMS to Return Submitted Information when there is a CWF Name and HIC Number Mismatch. Disposition Code 55 (Personal Characteristic Mismatch)
2449	Quarterly Healthcare Common Procedure Coding System (HCPCS) Drug/Biological Code Changes - July 2012 Update
2450	Issued to a specific audience, not posted to Internet/Intranet/ due to Confidentiality of Instruction
2451	Critical Access Hospital (CAH) Physician Rendering Anesthesia in a Hospital

2469	Instructions for Downloading the Medicare ZIP Code File for October 2012	Automated Multi-Channel Chemistry (AMCC) Tests for ESRD Beneficiaries
2470	Quarterly Update for the Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program (CBP) - October 2012	Automated Multi-Channel Chemistry (AMCC) Tests for ESRD Beneficiaries Pricing Modifiers
2471	Common Edits and Enhancements Modules (CEM) Code Set Update	Payment for Home Dialysis Supplies and Equipment DMERC, Carrier and F1 Determination of ESRD Method Selection
2472	Coding Changes to Ultrasound Diagnostic Procedures for Transesophageal Doppler Monitoring Transesophageal Doppler Used for Cardiac Monitoring Coding Requirements for Transesophageal Doppler Used for Cardiac Monitoring Furnished Before October 1, 2012 Coding Requirements for Transesophageal Doppler Used for Cardiac Monitoring Furnished On or After October 1, 2012 Correct Place of Service (POS) Code for Transesophageal Doppler Used for Cardiac Monitoring Services on Professional Claims	Installation and Delivery Charges for ESRD Equipment Elimination of Method II Home Dialysis
2473	Extracorporeal Photopheresis (ICD-10) Billing Requirements for Extracorporeal Photopheresis Healthcare Common Procedural Coding System (HCPCS), Applicable Diagnosis Codes and Procedure Code Medicare Summary Notices (MSNs), Remittance Advice Remark Codes (RAs) and Claim Adjustment Reason Code	Screening for Sexually Transmitted Infections (STIs) and High Intensity Behavioral Counseling (HIBC) to Prevent STIs (ICD-10) Screening for Sexually Transmitted Infections (STIs) and High Intensity Behavioral Counseling (HIBC) to Prevent STIs Healthcare Common Procedure Coding System (HCPCS) Codes for Screening for STIs and HIBC to Prevent STIs Diagnosis Code Reporting Billing Requirements Specialty Codes and Place of Service (POS)
2474	Handling Misdirected Claims for Part B Items and Services Disposition of Misdirected Claims to the B/MAC/Carrier/DME MAC A Local B/MAC/Carrier Receives a Claims for Services that are in Another Local B/MAC/Carrier's Payment Jurisdiction A Local B/MAC/Carrier Receives a Claim for Services that are in a DME MAC's Payment Jurisdiction A DME MAC Receives a Claim for Services that are in a Local B/MAC/Carrier's Payment Jurisdiction A Local B/MAC/Carrier/DME/MAC Receives a Claim for an RRB Beneficiary A Local B/MAC/Carrier/DME/MAC Receives a Claim for a UMWA Beneficiary Medicare Carrier or RRB-Named Carrier to Welfare Carrier Protests Concerning Transfer of Requests for Payment to Carrier Transfer of Claims Material Between Carrier and Intermediary (FI) A DME MAC receives a Paper Claim with Items or Services that are in Another DME MAC's Payment Jurisdiction Handling Incomplete or Invalid Claims	Revision of Medicare Summary Notice (MSN) for Non-Competitive Bid Claims/Modifying the Timely Filing Exceptions on Retroactive Medicare Entitlement and Retroactive Medicare Entitlement Involving State Medicaid Agencies Exceptions Allowing Extension of Time Limit Retroactive Medicare Entitlement Retroactive Medicare Entitlement Involving State Medicaid Agencies Issued to a specific, audience not posted to Internet/Intranet due to Confidentiality of Instruction
2475	Internet Only Manual (IOM) Update for Laboratory Services and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Claims Processed under the End Stage Renal Disease Prospective Payment System (ESRD PPS) Carrier Jurisdiction of Requests for Payments Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, Supplies, Parental and Enteral Nutrition (PEN) Mandatory Assignment on Carrier Claims Mandatory Assignment and Other Requirements for Home Dialysis Supplies and Equipment Paid Under Method II on Claims Submitted to Carriers Method of Payment for Clinical Laboratory Tests - Place of Service Variation Billing for End Stage Renal Disease (ESRD) Related Laboratory Tests	July 2012 Update of the Ambulatory Surgical Center Payment System (ASC) Advanced Beneficiary Notice of Noncoverage (ABN), Form CMS-R-131, Updated Manual Instructions Introduction - General Information General Statutory Authority - Financial Liability Protections Provisions (FLP) of Title XVII Applicability to Limitation On Liability (LOL) Compliance with Limitation on Liability Provisions ABN Scope Voluntary Uses Issuers of ABNs (Notifiers) Recipients of the ABN Representatives of Beneficiaries ABN Triggering Events Proper Notice Documents General Notice Preparation Requirements Completing the ABN Retention Requirements Effective Delivery Options for Delivery Other than in Person Effects of Lack of Notification, Medicare Review and Claim Adjudication ABN Standards for Upgraded Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) ABNs for Denials Under Sec. 1834(a)(17)(B) of the Act (Prohibition Against Unsolicited Telephone Contacts)

	Specimen Drawing for Dialysis Patients Pricing Modifiers Payment for Home Dialysis Supplies and Equipment DMERC, Carrier and FI Determination of ESRD Method Selection Installation and Delivery Charges for ESRD Equipment Elimination of Method II Home Dialysis
2488	None
2489	None
2490	Issued to a specific audience not posted to Internet/Intranet due to Confidentiality of Instruction
2491	None
2492	None
2493	Issued to a specific audience not posted to Internet/Intranet due to Confidentiality of Instruction
Medicare Secondary Payer (CMS-Pub. 100-05)	
84	ECRS Web User Guide Version 4.4 ECRS Web Quick Reference Card Version 5.2.1
85	Validation of Recovery Audit Program New Issues
86	Validation of Recovery Audit Program New Issues Clarifications of Medicare Conditional Payment Policy and Billing Procedures for Liability, No-Fault and Workers - Compensation Medicare Secondary Payer (MSP) Claims
Medicare Financial Management (CMS-Pub. 100-06)	
208	Overpayment Recovery from Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)
209	New Physician Specialty Code for Sleep Medicine and Sports Medicine Part D(1) - Claims Processing Timeliness - All Claims Part E - Interest Payment Data Classification of Claims for Accounting Physician/Limited License Physician Specialty Codes Non-Physician Practitioner/Supplier Specialty Codes Exhibit Definitions of Provider Specialty Codes for Opt Out Reporting Exhibit Validation of Recovery Audit Program New Issues
210	
Medicare State Operations Manual (CMS-Pub. 100-07)	
00	None
Medicare Program Integrity (CMS-Pub. 100-08)	
413	Issued to a specific audience not posted to Internet/Intranet due to Confidentiality of Instruction
414	General Update to Chapter 15 of the Program Integrity Manual (PIM) – Part IV NPI-Legacy Combinations Community Mental Health Centers (CMHCs) Comprehensive Outpatient Rehabilitation Facilities (CORFs) Hospices CLIA Labs Pharmacies Portable X-Ray Suppliers (PXRSS) Radiation Therapy Centers Intensive Cardiac Rehabilitation (ICR) Medicare Advantage and Other Managed Care Organizations

	ABNs for Claims Denied Under Sec. 1834(j)(1) of the Act (Supplier Did Not Meet Supplier Number Requirements) ABNs for Claims Denied in Advance Under Sec. 1834(a)(15) of the Act (When a Request for an Advance Determination of Coverage is Mandatory) Situations In Which Advance Coverage Determinations Are Mandatory ABNs for items listed in a DMEPOS Competitive Bidding Program Collection of Funds and Refunds Physicians' Services Refund Requirements DMEPOS Refund Requirements (RR) Provision for Claims for Medical Equipment and Supplies Time Limits and Penalties for Physicians and Suppliers in Making Refunds Supplier's Right to Recover Resalable Items for Which Refund Has Been Made CMS Regional Office (RO) Referral Procedures Special Considerations Obligation to Bill Medicare Emergencies or Urgent Situations/ Ambulance Transport Hospice and Comprehensive Outpatient Rehabilitation Facility (CORF) Special Issues Associated with the Advance Beneficiary Notice (ABN) for Hospice Providers Special Issues Associated with the Advance Beneficiary Notice (ABN) for CORFs
2481	July Update to the CY 2012 Medicare Physician Fee Schedule Database (MPFSDB)
2482	Updates to Caps and Limitations on Hospice Payments
2483	July 2012 Update of the Hospital Outpatient Prospective Payment System (OPPS) Payment Window for Outpatient Services Treated as Inpatient Services Inpatient-only Services
2484	October Quarterly Update to 2012 Annual Update of Healthcare Common Procedure Coding System (HCPCS) Codes Used for Skilled Nursing Facility (SNF) Consolidated Billing (CB) Enforcement
2485	Medicare Contractor Annual Update of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM)
2486	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
2487	Internet Only Manual (IOM) Update for Laboratory Services and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Claims Processed under the End Stage Renal Disease Prospective Payment System (ESRD PPS) Carrier Jurisdiction of Requests for Payments Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, Supplies, Parental and Enteral Nutrition (PEN) Mandatory Assignment on Carrier Claims Mandatory Assignment and Other Requirements for Home Dialysis Supplies and Equipment Paid Under Method II on Claims Submitted to Carriers Method of Payment for Clinical Laboratory Tests - Place of Service Variation Billing for End Stage Renal Disease (ESRD) Related Laboratory Tests Automated Multi-Channel Chemistry (AMCC) Tests for ESRD Beneficiaries

	Individual Practitioners Anesthesiology Assistants Audiologists Certified Nurse-Midwives Certified Registered Nurse Anesthetists (CRNAs) Clinical Nurse Specialists Clinical Psychologists Nurse Practitioners Occupational and Physical Therapists in Private Practice Physicians Physician Assistants (PAs) Psychologists Practicing Independently Registered Dietitians Speech Language Pathologists in Private Practice Manufacturers of Replacement Parts/Supplies for Prosthetic Implants or Implantable Durable Medical Equipment (DME) Surgically Inserted at an ASC Diabetes Self-Management Training (DSMT) Mass Immunizers Who Roster Bill Medicaid State Agencies Suppliers Not Eligible to Participate Basic Information (Section 1 of the Form CMS-855) Correspondence Address Section 2 of the Form CMS-855A Section 2 of the Form CMS-855A Supervising Physicians Desk and Site Reviews Background Scope of Site Visit Changes of Information and Ownership Movement of Providers and Suppliers into the High Level Reactivations	Special Procedures and Supplier Types Non-Certified Suppliers and Individual Practitioners Approval of Suppliers of Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Changes of Information - General Procedures Changes of Information and Complete Form CMS-855 Applications Incomplete or Unverifiable Changes of Information Special Change Request Instructions Regarding Certified Providers, Ambulatory Surgical Centers, and Portable X-ray Suppliers Voluntary Terminations Non-Form CMS-855 Enrollment Activities Contractor Communications Provider-Based Form CMS-855B Applications Submitted by Hospitals Participation (Part) Agreements and the Acceptance of Assignment Assignment of Part B Provider Transaction Access Numbers (PTANs) Establishing an Effective Date of Medicare Billing Privileges Reserved for Future Use On-site Inspections and Site Verifications Site Verifications Reserved for Future Use National Supplier Clearinghouse (NSC) Model Letters for Claims against Surety Bonds Zone Program Integrity Contractor (ZPIC) Identified Revocations CMS Satellite Office or Regional Office Identified Revocations General Update to Chapter 15 of the Program Integrity Manual (PIM) - Part VII General Update to Chapter 15 of the Program Integrity Manual (PIM) - Part VI Provider Self Audits Process for Handling Electronic Submission of Medical Documentation (esMD) Time Frames for Submission
415	Rejections Denials for Incomplete Applications General Update to Chapter 15 of the Program Integrity Manual (PIM) - Part V Application Returns, Rejections and Denials	General Update to Chapter 15 of the Program Integrity Manual (PIM) - Part VII General Update to Chapter 15 of the Program Integrity Manual (PIM) - Part VI Provider Self Audits Process for Handling Electronic Submission of Medical Documentation (esMD) Time Frames for Submission
416	Denials for Incomplete Applications General Update to Chapter 15 of the Program Integrity Manual (PIM) - Part III	Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09) None
417	Issued to a specific audience not posted to Internet/Intranet due to Confidentiality of Instruction	Medicare Quality Improvement Organization (CMS-Pub. 100-10) QIO Manual Chapter 5 - "Quality of Care Review"
418	OMB Collection Number	Introduction to Quality of Care Reviews Organization of Chapter
419	Issued to a specific audience not posted to Internet/Intranet due to Confidentiality of Instruction	Authority for Conducting Quality of Care Reviews Definitions Related to Quality of Care Reviews
420	Issued to a specific audience not posted to Internet/Intranet due to Confidentiality of Instruction	Beneficiary Complaint (Oral or Written) Review Eligibility for Beneficiary Complaint Review Beneficiary Complaint Intake Stage
421	General Update to Chapter 15 of the Program Integrity Manual (PIM) - Part VI	Scope of Complaint Initial Information Collection Initial Offer of Review Use of CMS-Designated Case Review System Immediate Advocacy Objectives of Immediate Advocacy
422	Independent Diagnostic Testing Facility (IDTF) Standards Multi-State Independent Diagnostic Testing Facilities (IDTFs) Interpreting Physicians Technicians	Immediate Advocacy Objectives of Immediate Advocacy

Eligibility for Immediate Advocacy Practitioner/Provider Consent to Participate in Immediate Advocacy Immediate Advocacy Procedures Discontinuation of Immediate Advocacy Retrospective Beneficiary Complaint Review Retrospective Beneficiary Complaint: Preparation and Forwarding of Complaint Form Retrospective Beneficiary Complaint: Follow-up Regarding Return of Signed Complaint Form Retrospective Beneficiary Complaint: Complaints Not Submitted in Writing (i.e., Oral Complaints) Retrospective Beneficiary Complaint: Receipt of a Signed Beneficiary Complaint Retrospective Beneficiary Complaint: Preparation of Beneficiary Complaint Folder Retrospective Beneficiary Complaint: Forwarding of Complaint to Review Analyst Retrospective Beneficiary Complaint: Requesting Medical Information Retrospective Beneficiary Complaint: Issuing a Claim Denial Retrospective Beneficiary Complaint: Review and Preparation of Medical Information Retrospective Beneficiary Complaint: Quality of Care Review Stage Retrospective Beneficiary Complaint: New Concerns Raised by the Beneficiary Retrospective Beneficiary Complaint: Preparation of Quality Review Decision (QRD) Form Retrospective Beneficiary Complaint: Receipt and Review by the Initial Determination Peer Reviewer (IDPR) Retrospective Beneficiary Complaint: Return and Review of Interim Initial Determination Retrospective Beneficiary Complaint: Opportunity for Discussion Stage Retrospective Beneficiary Complaint: Notification of Opportunity for Discussion Retrospective Beneficiary Complaint: Oral or Written Response to Opportunity for Discussion Retrospective Beneficiary Complaint: Prohibition on Submission of New/Additional Medical Information Retrospective Beneficiary Complaint: Review of Information Submitted During Opportunity for Discussion Stage Retrospective Beneficiary Complaint: No Response to Opportunity for Discussion Retrospective Beneficiary Complaint: Preparation of Final Initial Determination Letter to Practitioners/Providers with Request to Disclose Retrospective Beneficiary Complaint: Failure to Respond to the Final Initial Determination and Right to Re-Review Retrospective Beneficiary Complaint: Responsibility to Protect Information and Destruction of Materials Retrospective Beneficiary Complaint: Re-Review Stage Retrospective Beneficiary Complaint: Re-Review Peer Reviewer Retrospective Beneficiary Complaint: Preparation of Re-Review Disclosure	Package Retrospective Beneficiary Complaint: QIO's Final Decision, Preparing and Mailing Letter to Beneficiary Retrospective Beneficiary Complaint: Procedures for Closing a Complaint Review Concurrent Beneficiary Complaint: Preparation and Forwarding of Standard Complaint Form Concurrent Beneficiary Complaint: Follow-up Regarding Return of Signed Complaint Form Concurrent Beneficiary Complaint: Complaints Not Submitted in Writing (i.e., Oral Complaints) Concurrent Beneficiary Complaint: Receipt of a Signed Beneficiary Complaint Concurrent Beneficiary Complaint: Preparation of Beneficiary Complaint Folder Concurrent Beneficiary Complaint: Forwarding of Complaint to Review Analyst Concurrent Beneficiary Complaint: Requesting Medical Information Concurrent Beneficiary Complaint: Issuing a Claim Denial Concurrent Beneficiary Complaint: Review and Preparation of Medical Information Concurrent Beneficiary Complaint: Quality of Care Review Stage Concurrent Beneficiary Complaint: New Concerns Raised by the Beneficiary Concurrent Beneficiary Complaint: Preparation of Quality Review Decision (QRD) Form Concurrent Beneficiary Complaint: Return and Review of Interim Initial Determination Concurrent Beneficiary Complaint: Opportunity for Discussion Stage Concurrent Beneficiary Complaint: Notification of Opportunity for Discussion Concurrent Beneficiary Complaint: Oral or Written Response to Opportunity for Discussion Concurrent Beneficiary Complaint: Prohibition on Submission of New/Additional Medical Information Concurrent Beneficiary Complaint: Prohibition on Submission of New/Additional Medical Information Concurrent Beneficiary Complaint: No Response to Opportunity for Discussion Concurrent Beneficiary Complaint: Preparation of Final Initial Determination Letter to Practitioners/Providers with Request to Disclose Concurrent Beneficiary Complaint: Failure to Respond to the Final Initial Determination and Right to Re-Review Concurrent Beneficiary Complaint: Responsibility to Protect Information and Destruction of Materials Concurrent Beneficiary Complaint: Re-Review Stage Concurrent Beneficiary Complaint: Re-Review Peer Reviewer Concurrent Beneficiary Complaint: Preparation of Re-Review Disclosure Package Concurrent Beneficiary Complaint: QIO's Final Decision, Preparing and
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Mailing Letter to Beneficiary Concurrent Beneficiary Complaint: Procedures for Closing a Beneficiary Complaint Review Direct Advocacy Objectives of Direct Advocacy Practitioner/Provider Consent to Participate in Direct Advocacy Direct Advocacy Procedures Discontinuation of Direct Advocacy General Quality of Care Reviews Concerns Identified During Other Review Activities Referrals Referrals from Other Federal Government Organizations Overlap of Review Authority Tracking and Trending of Data Retrospective General Quality of Care Review Retrospective General Quality Review: Preparation of General Quality of Care Review Folder Retrospective General Quality Review: Review of Folder by Review Analyst Retrospective General Quality Review: Requesting Medical Information Retrospective General Quality Review: Issuing a Claim Denial Retrospective General Quality Review: Review and Preparation of Medical Information Retrospective General Quality Review: Quality of Care Review Stage Retrospective General Quality Review: Preparation of Quality Review Decision (QRD) Form Retrospective General Quality Review: Receipt and Review by the Initial Determination Peer Reviewer (IDPR) Retrospective General Quality Review: Return of Interim Initial Determination Retrospective General Quality Review: Return of Interim Initial Determination Retrospective General Quality Review: Submission of Oral or Written Response to Opportunity for Discussion Retrospective General Quality Review: Prohibition on Submission of New/Additional Medical Information Retrospective General Quality Review: Review of Information Submitted during Opportunity for Discussion Stage Retrospective General Quality Review: No Response Received to Opportunity for Discussion Retrospective General Quality Review: Preparation of Final Determination Letter Retrospective General Quality Review: Failure to Respond to the Final Initial Determination and Right to Re-Review Retrospective General Quality Review: Responsibility to Protect Information and Destruction of Materials Retrospective General Quality Review: Re-Review Stage Retrospective General Quality Review: Re-Review Peer Reviewer Retrospective General Quality Review: Preparation of Re-Review Package Retrospective General Quality Review: Preparation and Mailing of Final Re-	
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Review Determination Letter Retrospective General Quality Review: Procedures for Closing Review Concurrent General Quality of Care Review Concurrent General Quality Review: Preparation of General Quality of Care Review Folder Concurrent General Quality Review: Review of Folder by Review Analyst Concurrent General Quality Review: Requesting Medical Information Concurrent General Quality Review: Issuing a Claim Denial Concurrent General Quality Review: Review and Preparation of Medical Information Concurrent General Quality Review: Quality of Care Review Stage Concurrent General Quality Review: Preparation of Quality Review Decision (QRD) Form Concurrent General Quality Review: Receipt and Review by the Initial Determination Peer Reviewer (IDPR) Concurrent General Quality Review: Return and Review of Interim Initial Determination Concurrent General Quality Review: Opportunity for Discussion Stage Concurrent General Quality Review: Notification of Opportunity for Discussion Concurrent General Quality Review: Submission of Oral or Written Response to Opportunity for Discussion Concurrent General Quality Review: Prohibition on Submission of New/Additional Medical Information Concurrent General Quality Review: Review of Information Submitted During Opportunity for Discussion Stage Concurrent General Quality Review: No Response Received to Opportunity for Discussion Concurrent General Quality Review: Preparation of Final Determination Letter Concurrent General Quality Review: Failure to Respond to the Final Initial Determination and Right to Re-Review Concurrent General Quality Review: Destruction of Materials Associated with the Review Concurrent General Quality Review: Re-Review Stage Concurrent General Quality Review: Re-Review Peer Reviewer Concurrent General Quality Review: Preparation of Re-Review Package Concurrent General Quality Review: Preparation and Mailing of Final Review Determination Letter to the Practitioner or Provider Concurrent General Quality Review: Preparation and Mailing of Final Review Determination Letter to the Practitioner or Provider Concurrent General Quality Review: Procedures for Closing a General Quality of Care Review Quality Improvement Initiatives Unwillingness to Cooperate Development of a Quality Improvement Initiative Time Frames for Development of a Quality Improvement Initiative Quality Improvement Initiative Not Needed Quality Improvement Initiative Root Cause Analysis "Stand-Alone" or Isolated Concerns	
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	Intervention and Improvement Plan Monitoring Quality Improvement Initiatives Reporting Results of System-Wide Change Quality Improvement Initiatives Medicare Quality of Care Complaint Form Quality Review Decision (QRD) Form Interim Initial Determination Letter for Practitioners and Providers Final Initial Determination Letter to Practitioners/Providers with Request to Disclose (For Beneficiary Complaints) Re-Review Determination Letter to Providers/Practitioners with Request to Disclose (For Beneficiary Complaints) Letter to Beneficiary – QIO's Final Decision Final Determination Letter (General Quality of Care Reviews) Re-Review Determination Letter to the Provider or Practitioner (General Quality of Care Reviews) Retrospective Beneficiary Complaint Review Time Frames Concurrent Beneficiary Complaint Review Time Frames Retrospective General Quality of Care Review Time Frames Concurrent General Quality of Care Review Time Frames
00	Medicare End Stage Renal Disease Network Organizations (CMS Pub 100-14) None
105	Medicare Managed Care (CMS-Pub. 100-16) Chapter 13: Medicare Managed Care Beneficiary Grievances, Organization Determinations, and Appeals Applicable to Medicare Advantage Plans, Cost Plans, and Health Care Prepayment Plans (HCPPs), (collectively referred to as Medicare Health Plans) Medicare Managed Care Beneficiary Grievances, Organization Determinations, and Appeals Definition of Terms Responsibilities of the Medicare Health Plan Grievances Appeals Representatives Representatives Filing on Behalf of Enrollees Authority of a Representative Notice Delivery to Representatives Complaints That Contain Elements of Both Appeals and Grievances Distinguishing Between Appeals and Grievances Procedures for Handling a Grievance Procedures for Handling Misclassified Grievances Written Explanation of Grievance Procedures Organization Determinations Special Jurisdictional Rules for Claims Processing and Appeals for Medicare Cost Plans and HCPPs Standard Time Frames for Organization Determinations Who Must review an Organization Determination Written Notification of Medicare Health Plan Decision Examples of Unacceptable/Acceptable Denial Rationale Notice Requirements for Non-contract Providers How the Medicare Health Plan Processes Requests for Expedited

	Organization Determinations Defining the Medical Exigency Standard Action Following Denial of Request for Expedited Review Action Following Acceptance of Requests for Expedited Determinations Notice Requirements for Expedited Organization Determinations Effect of Failure to Provide Timely Notice Parties to the Organization Determination for Purposes of an Appeal Non-Contract Provider Appeals Who May Request Reconsideration Medicare Health Plan Procedures for Accepting Standard Pre-service Reconsiderations from Physicians How to Request a Standard Reconsideration Conditions Upon Which a Plan May Grant a Good Cause for Late Filing Exception Withdrawal of Request for Reconsideration Who Must Reconsider an Adverse Organization Determination Standard Reconsideration of a Pre-Service Request Adverse Plan Reconsideration Determination Standard Reconsideration of a Request for Payment How the Medicare Health Plan Processes Requests for Expedited Reconsiderations Preparing the Case File for the Independent Review Entity Storage of Appeal Case Files by the Independent Review Entity QIO Fast-Track Appeals of Coverage Terminations in Certain Provider Settings (SNF, HHA, and CORF) Notice of Medicare Non-Coverage (NOMNC) Meaning of Valid Delivery When to Issue the Notice of Medicare Non-Coverage (NOMNC) Detailed Explanation of Non-Coverage (DENC) When to Issue the Detailed Explanation of Non-Coverage Enrollee Procedures to Request Fast-Track Review of Provider Service Terminations Effect of a QIO Fast-Track Determination Fast-Track Reconsiderations for Medicare Health Plan Enrollees The Role of the Enrollee and Liability The Responsibilities of the QIO If the QIO Reaffirms its Decision If the QIO's Decision is Reversed Handling Misdirected Records QIO Authority to Request Enrollee Records Determination of Amount in Controversy Medicare Appeals Council (MAC) Review Filing a Request for Medicare Appeals Council (MAC) Review Time Limit for Filing a Request for Medicare Appeals Council (MAC) Review Medicare Appeals Council (MAC) Review Procedures MAC Review Procedures Judicial Review Requesting Judicial Review Reopening and Revising Determinations and Decisions
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Demonstrations (CMS-Pub. 100-19)	
00	None
One Time Notification (CMS-Pub. 100-20)	
1060	Implementation of the Award for the Jurisdiction H Part A and Part B Medicare Administrative Contractor (JH A/B MAC) Including New Workload Numbers for Arkansas, Colorado, Louisiana, Mississippi, New Mexico, Oklahoma, and Texas as well as for the J4 WPS Legacy Part A Workload
1061	Implementation of the Award for the Jurisdiction 8 Part A and Part B Medicare Administrative Contractor (J8 A/B MAC) including New Workload Numbers for Indiana and Michigan
1062	Health Insurance Portability and Accountability Act (HIPAA) 5010 and D.0 Annual Re-Certification Program
1063	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1064	Health Insurance Portability and Accountability Act (HIPAA) 5010 837 Institutional (837I) Edits and 5010 837 Professional (837P) Edits – October 2012
1065	Addition of New Common Working File (CWF) Medicare Secondary Payer (MSP) Utilization Edit Codes for CWF to Send the Shared Systems When the Diagnosis Code on the Claim Is Considered a Match with the Family of DX Codes in CWF for Non-Group Health Plan (NGHP) MSP Claims
1066	Implementation of the HIPAA Version 5010 276/277 Claim Status Edits October 2012 Release
1067	Fee for Service Common Eligibility Services Conference Calls and Research
1068	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1069	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1070	Request to Require Hours for Research and Conference Calls with Maintainers, MACs, and EDCs and Additional Requirements for IDR Shared Systems
1071	Expansion of the Laboratory National Coverage Determination (NCD) Edit Software
1072	Fiscal Intermediary Shared System (FISS) System Enhancement for Including Line Level Rendering Physicians/Practitioners National Provider Identifier (NPI) and Name Information in the Comprehensive Error Rate Testing (CERT) Resolution Record
1073	American Recovery and Reinvestment Act of 2009 Electronic Health Record (EHR) Incentive Program: Financial Information File Transfer Modifications for Eligible Hospitals
1074	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1075	Medicare Fee-for-Service (FFS) Editing and Flat File Utility
1076	Health Insurance Portability and Accountability (HIPAA) 5010/D.0 Fixes - October 2012
1077	Update to the Fiscal Intermediary Shared Systems (FISS) Outpatient Provider Specific File (OPSF) for Children's Hospitals
1078	

Independent Review Entity Monitoring of Effectuation Requirements Effectuation Requirements When an Individual Has Disenrolled from a Medicare Health Plan Effectuation Requirements When a Medicare Health Plan Contract Ends Immediate Review Process for Hospital Inpatients in Medicare Health Plans Scope of the Instructions Special Considerations Notifying Enrollees of their Right to an Immediate Review Delivery of the Important Message from Medicare The Follow-Up Copy of the Signed Important Message from Medicare Rules and Responsibilities When an Enrollee Requests an Immediate Review The Role of the Enrollee and Liability The Responsibilities of the Medicare Health Plan The Role of the QIOs Effect of a QIO Immediate Review Determination General Notice Requirements Number of Copies Reproduction Length and Page Size Contrast of Paper and Print Modifications Font Customization Retention of the Notices Completing the Notices Translated Notices Hospital Requested Review Effect of the Hospital Requested Determination Immediate Reconsiderations for Hospital Inpatients in Medicare Health Plans Liability for Hospital Costs The Role of the Enrollee and Liability The Responsibilities of the QIO If the QIO Reaffirms its Decision If the QIO's Decision is Reversed Data Notice of Denial of Medical Coverage and Notice of Denial of Payment Beneficiary Appeals and Quality of Care Grievances Explanatory Data Report An Important Message from Medicare About Your Rights Detailed Notice of Discharge Appointment of Representative - Form CMS-1696 Model Notice of Right to an Expedited Grievance Waiver of Liability Statement Notice of Medicare Non-Coverage (NOMNC) Detailed Explanation of Non-Coverage (DENC) Model Notice of Appeal Status	
Medicare Business Partners Systems Security (CMS-Pub. 100-17)	
00	None

1079	New Occurrence Code to Report Date of Death
1080	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1081	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1082	FISS update for Clinical Laboratory Fee Schedule upload to include Kansas Payment Locality Structure
1083	Temporary Direction to Accommodate Organ Donor Complications Billing on 837I Claims
1084	Common Edits and Enhancements Module (CEM) and Receipt, Control, and Balancing Updates – October 2012
1085	Establish an Automated Process between ViPS Medicare System (VMS) and the Provider Enrollment Chain and Ownership System (PECOS) to Post Payment
1086	Suspension Alert Codes and Related Data to All Four Durable Medical Equipment Medicare Administrator Contractors (DME MAC) Jurisdictions
1087	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1088	Expand Place of Service Address to Include Full Address
1089	Reporting of Recoupment for Overpayment on the Remittance Advice (RA) with Patient Control Number
1090	Implement Fraud Prevention Predictive Modeling Prepayment Edits
1091	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1092	Enhancements to the Recovery Audit Mass Adjustment/Reporting Process in the Fiscal Intermediary Shared System (FISS)
1093	Affordable Care Act (ACA) Model 1 Bundled Payments for Care Improvement Initiative—Implementation of New Fields for Inpatient Provider Specific File (PSF) and Demonstration Codes
1094	Automated Tracking and Reporting of Recovery Audit-Associated Reopenings and Appeals
1095	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1096	Enhancements to the Recovery Audit Mass Adjustment/Reporting Process in the ViPS Medicare System (VMS)
1097	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
	Change in Creation Date for CMS Standard Edit/Audit/Reason Code Reports

Addendum II: Regulation Documents Published in the Federal Register (April through June 2012)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**.

To purchase individual copies or subscribe to the **Federal Register**, contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and

page number.

The **Federal Register** is available as an online database through **GPO Access**. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at <http://www.gpoaccess.gov/fr/index.html>. The following Website <http://www.archives.gov/federal-register/> provides information on how to access electronic editions, printed editions, and reference copies.

This information is available on our Website at:

<http://www.cms.gov/quarterlyproviderupdates/downloads/Regs-2Q12QPU.pdf>

For questions or additional information, contact Terri Plumb (410-786-4481).

Addendum III: CMS Rulings

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters. The rulings can be accessed at

<http://www.cms.gov/Rulings/CMSR/list.asp#TopOfPage>. For questions or additional information, contact Tiffany Lafferty (410-786-7548).

Addendum IV: Medicare National Coverage Determinations (April through June 2012)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in some cases, explain why it was not appropriate to issue an NCD. Information on

completed decisions as well as pending decisions has also been posted on the CMS Website. For the purposes of this quarterly notice, we list only the specific updates that have occurred in the 3-month period. This information is available on our Website at: www.cms.gov/medicare-coverage-database/. For questions or additional information, contact Wanda Belle (410-786-7491).

Title	NCDM Section	Transmittal Number	Issue Date	Effective Date
Assigned Codes for Home Oxygen Use for Cluster Headache (CH) in a Clinical Trial (ICD-10)	NCD 240.2 CPM 20.30.6	R2465CP	05/17/2012	10/01/2012
Extracorporeal Photophoresis	110.4	R143NCD R2473CP	05/18/2012	10/01/2012
Coding Changes to Ultrasound Diagnostic for Transesophageal Doppler Monitoring	220.5	R2472CP	05/18/2012	10/01/2012

Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (April through June 2012)

Addendum V includes listings of the FDA-approved investigational device exemption (IDE) numbers that the FDA assigns. The listings are organized according to the categories to which the devices are assigned (that is, Category A or Category B), and identified by the IDE number. For the purposes of this quarterly notice, we list only the specific updates to the Category B IDEs as of the ending date of the period covered by this notice and a contact person for questions or additional information. For questions or additional information, contact John Manlove (410-786-6877). Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c) devices fall into one of three classes. To assist CMS under this categorization process, the FDA assigns one of two categories to each FDA-approved investigational device exemption (IDE). Category A refers to experimental IDEs, and Category B refers to non-experimental IDEs. To obtain more information about the classes or categories, please refer to the notice published in the April 21, 1997 **Federal Register** (62 FR 19328).

IDE	Device	Start Date
BB15045	Magnetic-Activated Cell Sorter (CliniMACS, Miltenyi)	04/12/12
BB15047	Magnetic-Activated Cell Sorter (CliniMACS, Miltenyi)	04/13/12
G100108	Exablate Model 2100 Type 3.0	04/11/12
G100297	HeartAssist 5 VAD System	04/26/12
G110021	Optimesh 1500	06/15/12

G110098	Bondase Topical Skin Adhesive	04/24/12
G110163	The Twin Star Medical ECS Monitoring System	04/05/12
G110187	Cardiac Ablation System	05/16/12
G110200	IN.PACT Admiral Paclitaxel-Eluting Percutaneous Transluminal Angioplasty Balloon Catheter	04/13/12
G110219	1.20 MM Emerge PTCA Dilation Catheter	04/26/12
G110225	Radiesse Dermal Filler	06/15/12
G110231	Circular Mapping Catheters	05/09/12
G110243	Ischemic Global Hypoxia Trial	04/09/12
G120041	Intractable Mesial Temporal Lobe	06/06/12
G120045	Aspireassist Aspiration Therapy System	05/16/12
G120050	Helix Stent System-Helix Clinical Trial	05/17/12
G120055	AVN Video Laryngoscope	05/25/12
G120059	Renal Sympathetic Denervation	04/06/12
G120062	Zeltiq System	06/06/12
G120064	Alphacore	04/12/12
G120066	Cancer Type ID	04/12/12
G120067	Medtronic Phased RF System	04/18/12
G120068	Zeltiq Cooltix System	06/20/12
G120070	Synvisc-One (Hylan G-F 20)	04/13/12
G120071	Mostegra Trail	04/19/12
G120072	SmartPatch	04/25/12
G120078	St. Jude's Stimulation System	04/27/12
G120082	Blazer Open-Irrigated Ablation Catheter and Cable Blazer Open-Irrigated Ablation Catheter	05/01/12
G120083	Obalon Gastric Balloon System	05/02/12
G120085	Zenith TX2 Low Profile Endovascular Graft	05/02/12
G120086	MOE Medical Device	05/03/12
G120094	BioDesign ESIS Fistula Plug	05/10/12
G120095	Implantable Deep Brain Stimulation System	05/10/12
G120096	Neural Prosthetic System	05/11/12
G120099	Nucleus 24 Multichannel Auditory Brainstem Implant	05/16/12
G120107	Embozene Device	05/30/12
G120108	Pericardial Aortic Bioprosthesis Device	05/30/12
G120109	VYSIS CLL CDX Fish Kit(List Number: 07N67-020) Companion Diagnostic to Merck Compound DINACICLIB	05/29/12
G120116	Cabochon System	06/06/12
G120118	Cochlear Nucleus C1422 Cochlear Implant	06/07/12
G120123	Synergy Everolimus-Eluting Platinum Chromium Coronary Stent System	06/15/12
G120125	Exilis System	06/21/12
G120128	Prevena Incision Management System	06/22/12
G120130	Strattice Reconstructive Tissue Matrix Device	06/28/12

Addendum VI: Approval Numbers for Collections of Information (April through June 2012)

All approval numbers are available to the public at Reginfo.gov. Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain. For questions or additional information, contact Mitch Bryman (410-786-5258).

Addendum VII: Medicare-Approved Carotid Stent Facilities, (April through June 2012)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients. On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available on our Website at:

<http://www.cms.gov/Medicare/ApprovedFacilities/CASE/list.asp#TopOfPage>
For questions or additional information, contact Sarah J. McClain (410-786-2294).

Facility	Provider Number	Effective Date	State
The following facilities are new listings for this quarter.			
Physicians Regional Healthcare System 8300 Collier Boulevard Naples, FL 34114	1215003348	04/12/2012	FL
Maui Memorial Medical Center 221 Mahalani Street Wailuku, HI 96793	120002	04/12/2012	HI
Franciscan St. Anthony Health – Michigan City 301 West Homer Street Michigan City, IN 46360	150015	04/30/2012	IN
Florida Hospital Heartland Medical Center 4200 Sun 'n Lake Boulevard Sebring, FL 33872	100109	04/30/2012	FL
Aurora Medical Center Grafton 975 Port Washington Road Grafton, WI 53024	520207	05/09/2012	WI
Medical Center of Arlington 3301 Matlock Road Arlington, TX 76015	450675	05/09/2012	TX

Facility	Provider Number	Effective Date	State
Hurley Medical Center 1 Hurley Plaza Flint, MI 48503	230132	05/15/2012	MI
UHS / University of Tennessee Medical Center 1520 Cherokee Trail Suite 200 Knoxville, TN 37920	440015	05/15/2012	TN
Methodist Charlton Medical Center 3500 West Wheatland Road Dallas, TX 75237	1275592131	05/31/2012	TX
Lakeway Regional Medical Center, LLC 100 Medical Parkway Lakeway, TX 78734	1831471291	06/13/2012	TX
Huron Medical Center 1100 S. Van Dyke Bad Axe, MI 48413	230118	06/18/2012	MI
University Physicians Hospital (The University of Arizona Medical Center) 2800 East Ajo Way Tucson, AZ 85713	030111	06/21/2012	AZ
Editorial changes (shown in bold) were made to the facilities listed below.			
AHMC Anaheim Regional Medical Center 1111 West La Palma Avenue Anaheim, CA 92801-2881	050226A	02/08/2006	CA
Methodist Texsan Hospital 6700 IH 10 West San Antonio, TX 78201	450388	05/26/2005	TX
Galichia Heart Hospital 2610 N. Woodlawn Wichita, KS 67220-2729	170202	05/16/2005	KS
The following facility has been removed from the listings of Medicare-approved carotid stent facilities.			
Potomac Hospital 2300 Opitz Boulevard Woodbridge, VA 22191	490113	02/02/2006	VA

Addendum VIII: American College of Cardiology's National Cardiovascular Data Registry Sites (April through June 2012)

Addendum VIII includes a list of the American College of Cardiology's National Cardiovascular Data Registry Sites. We cover implantable cardioverter defibrillators (ICDs) for certain clinical indications, as long as information about the procedures is reported to a central registry. Detailed descriptions of the covered indications are available in the NCD. In January 2005, CMS established the ICD Abstraction Tool through the Quality Network Exchange (QNet) as a temporary data collection mechanism. On October 27, 2005, CMS announced that the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) ICD Registry satisfies the data reporting requirements in the NCD. Hospitals needed to transition to the ACC-NCDR ICD Registry by April 2006.

Effective January 27, 2005, to obtain reimbursement, Medicare NCD policy requires that providers implanting ICDs for primary prevention clinical indications (that is, patients without a history of cardiac arrest or spontaneous arrhythmia) report data on each primary prevention ICD procedure. Details of the clinical indications that are covered by Medicare and their respective data reporting requirements are available in the Medicare NCD Manual, which is on the CMS Website at <http://www.cms.hhs.gov/Manuals/IOM/itemdetail.asp?filterType=none&filterByDID=99&sortByDID=1&sortOrder=ascending&itemID=CMS014961>

A provider can use either of two mechanisms to satisfy the data reporting requirement. Patients may be enrolled either in an Investigational Device Exemption trial studying ICDs as identified by the FDA or in the ACC-NCDR ICD registry. Therefore, for a beneficiary to receive a Medicare-covered ICD implantation for primary prevention, the beneficiary must receive the scan in a facility that participates in the ACC-NCDR ICD registry. The entire list of facilities that participate in the ACC-NCDR ICD registry can be found at www.ncdr.com/webncdr/common

For the purposes of this quarterly notice, we are providing only the specific updates that have occurred to the list of Medicare-approved ICD facilities in the 3-month period. This information is available by accessing our Website and clicking on the link for the American College of Cardiology's National Cardiovascular Data Registry at: www.ncdr.com/webncdr/common. For questions or additional information, contact Joanna Baldwin, MS (410-786-7205).

Facility Name	Address 1	City	State	Zip Code
The following facilities are new listings for this quarter.				
Orange Park Medical Center	2001 Kingsley Avenue	Orange Park	FL	32073
Garfield Medical Center	525 N. Garfield Avenue	Monterey Park	CA	91754
Sutter Solano Medical Center	300 Hospital Drive	Vallejo	CA	94589
Fallbrook Hospital	624 E. Elder Street	Fallbrook	CA	92028
Butler Memorial Hospital	One Hospital Way	Butler	PA	16001
University Medical Center Brackenridge	601 East 15 th Street	Austin	TX	78745
Watauga Medical Center	336 Deerfield Road	Boone	NC	28607
Gulf Coast Surgery Center	411 Second Street East	Bradenton	FL	32408
Homestead Hospital	None	Homestead	FL	33030
Frisbie Memorial	975 Baptist Way	Rochester	NH	03867
	11 Whitehall Road			

Hospital	1515 Holcombe Boulevard	Houston	TX	77030
University of Texas MD Anderson Cancer Center	PO Box 728 (only current address)	Kennett	MO	63857
Twin Rivers Regional Medical Center	791 E. Summit Avenue	Oconomowoc	WI	53066
Oconomowoc Memorial Hospital	11212 Texas 151	San Antonio	TX	78251
CHRISTUS Santa Rosa Hospital - Westover Hills	1040 West Jefferson Street	Brownsville	TX	78520
Valley Baptist Medical Center-Brownsville	1 Shirliff Way	Jacksonville	FL	32204
St. Luke's Hospital	PO Box 421718 606 Black River Road	Georgetown	SC	29442
Georgetown Health Group(Georgetown Memorial Hospital	5252 W. University Drive	McKinney	TX	75071
Baylor Medical Center at McKinney	The following facilities are no longer participants as of this notice.			
East Cooper Memorial Hospital	2000 Hospital Drive	Charleston	SC	29464
Heart Hospital of New Mexico	504 Elm Street	Albuquerque	NM	87102
Saint Josephs Regional Medical Center	5215 Holy Cross Parkway	Mishawaka	IN	46545
Spring Valley Hospital	5400 South Rainbow Boulevard	Las Vegas	NV	89118
St. Elizabeth Hospital	2233 W. Division	Chicago	IL	60622

Addendum IX: Active CMS Coverage-Related Guidance Documents (April through June 2012)

There were no CMS coverage-related guidance documents published in the April through June 2012 quarter. To obtain full-text copies of these documents, visit the CMS Coverage Website at http://www.cms.gov/mcd/index_list.asp?list_type=mcd_1 and click on the archives link. For questions or additional information, contact Lori Ashby (410-786-6322).

Addendum X:

List of Special One-Time Notices Regarding National Coverage Provisions (April through June 2012)

There were no special one-time notices regarding national coverage provisions published in the April through June 2012 quarter. This information is available at www.cms.hhs.gov/coverage. For questions or additional information, contact Lori Ashby (410-786-6322).

**Addendum XI: National Oncologic PET Registry (NOPR)
(April through June 2012)**

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron emission tomography (PET)** scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the registry.

For the purposes of this notice, we are providing only the specific updates that occurred in this 3-month period. This information is available at

<http://www.cms.gov/MedicareApprovedFacilities/NOPR/list.asp#TopOfPage>.

For questions or additional information, contact Stuart Caplan, RN, MAS (410-786-8564)

**Addendum XII: Medicare-Approved Ventricular Assist Device
(Destination Therapy) Facilities (April through June 2012)**

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates that have occurred to the list of Medicare-approved facilities that meet our standards in the 3-month period. This information is available on our Website at

<http://www.cms.gov/MedicareApprovedFacilities/VAD/list.asp#TopOfPage>. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

Editorial changes (shown in bold) were made to the facilities listed below.			
Genesis Healthcare Partners-Genesis Imaging Capital Oncology PLLC New name: MultiCare Health System effective – Auburn	121 North Division Street	Auburn WA	98001
Old name: The West Clinic New name: Methodist West Hospital PET Imaging Center	100 N. Humphreys Boulevard	Memphis TN	38120
Old name: HACKENSACK MEDICAL AND MOLECULAR IMAGING New name: AMERICAN IMAGING	155 State Street	Hackensack NJ	07601

Facility	The following facilities are new listings for this quarter.	Provider Number	Date Approved	State
Vanderbilt University Hospital and the Vanderbilt Clinic 1211 21st Avenue South Nashville, TN 37232		440039	04/21/2012	TN
The University of Toledo Medical Center 3000 Arlington Avenue Toledo, OH 43614		360048	04/20/2012	OH
Edward Health Services Corporation 801 South Washington Street Naperville, IL 60540		140231	06/22/2012	IL

**Addendum XIII: Lung Volume Reduction Surgery (LVRS)
(April through June 2012)**

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema

Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. There were no additions to the listing of facilities for lung volume reduction surgery published in the April through June 2012 quarter. This information is available on our Website at

www.cms.gov/Medicare/ApprovedFacilities/LVRS/list.asp#TopOfPage. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

Addendum XIV: Medicare-Approved Bariatric Surgery Facilities (April through June 2012)

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level I Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

For the purposes of this quarterly notice, we list only the specific updates to Medicare-approved facilities that meet CMS's minimum facility standards for bariatric surgery and have been certified by ACS and/or ASBMS in the 3-month period. This information is available on our

Website at

www.cms.gov/Medicare/ApprovedFacilities/BSF/list.asp#TopOfPage. For questions or additional information, contact Kate Tillman, RN, MAS (410-786-9252).

Facility	Provider Number	Date Approved	State
The following facilities are new listings for this quarter.			
Scott and White Memorial Hospital 2401 S. 31st Street Temple, TX 76508	440054	10/25/2010	TX
Kaiser Permanente Hospital Fremont 39400 Paseo Padre Parkway Fremont, CA 94538	1801960513	04/02/2012	CA
Vanderbilt University Medical Center 1215 21st Avenue South Nashville, TN 37232	1396882205	05/07/2012	IL
Editorial changes (shown in bold) were made to the facilities listed below.			
Hillcrest Hospital 729 South East Main Street Simpsonville, SC 29681	42-0037	10/10/2007	SC
St. Luke's Hospital 4201 Belfort Road Jacksonville, FL 32216	100307	04/14/2011	FL
Theda Clark Medical Center 200 Theda Clark Medical Plaza, Suite 410 Neenah, WI 54956	000071445	10/21/2005	WI
Tampa General Hospital 1 Tampa General Circle Tampa, FL 33606	100128	03/03/2006	FL
The following facilities are no longer participants as of this notice.			
UCLA Medical Center 10833 Le Conte Avenue, CHS 72-236 Los Angeles, CA 90095	050262	01/08/2008	CA
Henry Ford Macomb Hospital 13355 East 10 Mile Road Warren, MI 48089	230047	10/07/2008	MI
Anniston Stringfellow Hospital 301 East 18th Street Anniston, AL 36207	01-0038	03/11/2008	AL
Saint Alphonsus Regional Medical Center 1055 North Curtis Road Boise, ID 83706	130007	10/07/2008	ID
South Hampton Community Hospital 2929 South Hampton Road Dallas, TX 75224	670002	08/09/2010	TX
Methodist Hospitals, Inc. 8701 Broadway Merrillville, IN 46410	150002	10/30/2007	IN

Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (April through June 2012)

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the April through June 2012 quarter.

This information is available on our Website at www.cms.gov/Medicare/ApprovedFacilities/PETDT/list.asp#TopOfPage. For questions or additional information, contact Stuart Caplan, RN, MAS (410-786-8564).

Eastern Idaho Regional Medical Center 3100 Channing Way Idaho Falls, ID 83404	13-0018	12/10/2007	ID
Rhode Island Hospital 593 Eddy Street Providence, RI 02903	410007	02/25/2008	RI
Bothwell Regional Health Center 601 East 14th Street Sedalia, MO 65301	260009	05/17/2006	MO

[FR Doc. 2012-20074 Filed 8-16-12; 8:45 am]

BILLING CODE 4120-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Administration for Children and Families****Submission for OMB Review; Comment Request**

Title: Federal Child Support Services Portal Registration.

OMB No.: 0970-0370.

The purpose of the Federal Child Support Services Portal Registration is to collect information from an authorized individual registering to use the Federal Parent Locator Service (FPLS) Child Support Services Portal. This information collection is necessary to authenticate the individual's identity and comply with the statutory requirement that federal Office of Child Support Enforcement (OCSE) establish and implement safeguards to restrict access to confidential information in the

FPLS to authorized persons. 42 U.S.C. 653(m)(2).

After identity is authenticated, secure accounts will be created for authorized users to view data for their respective applications.

Respondents: Employers, Financial Institutions, Insurers, State Agencies, Local Access and Visitation Providers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Registration Screen	588	1	0.1	58.8

Estimated Total Annual Burden Hours: 58.8

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Bob Sargis,

Reports Clearance, Officer.

[FR Doc. 2012-20164 Filed 8-16-12; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Administration for Children and Families****Proposed Information Collection Activity; Comment Request**

Title: DHHS/ACF/OPRE Head Start Classroom-based Approaches and Resources for Emotion and Social skill promotion (CARES) project: Tracking Participants.

OMB No.: 0970-0364.

Description: The Head Start Classroom-based Approaches and Resources for Emotion and Social skill promotion (CARES) project is an evaluation of three social emotional program enhancements within Head Start settings serving three- and four-year-old children. This project focuses on identifying the central features of effective programs to provide the information federal policy makers and Head Start providers will need if they are to increase Head Start's capacity to improve the social and emotional skills and school readiness of preschool age children. The Head Start CARES project completed data collection for cohort (1) 4-year-olds and cohort (2) 3-year-olds in

spring of 2011 and cohort (2) 4-year-olds in the spring of 2012.

ACF is proposing to collect information necessary to identify CARES study respondents' current location and follow-up with respondents until the children reach third grade. In support of an examination of third grade outcomes, information must be collected from parents or guardians until the third grade year. Therefore, in the spring of 2013 tracking of all children will be necessary, in the spring of 2014 for the three- and four-year-old children in cohort 2 only, and in the spring of 2015 the three-year-olds in cohort 2 only. To enable the opportunity to conduct data collection in 3rd grade, complete tracking information on the full sample, both ages and cohorts, for all years until third grade is necessary. In addition to location and contact information, a small set of additional items will provide information on the parents' perception of the children's well-being.

Respondents: The respondents to the tracking phone calls will be low-income parents and their Head Start children. This is a three-year information collection request.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Estimated annual burden hours
Parent Survey Cohort 1-4 year olds	201	1	0.33	66
Parent Survey Cohort 2-4 year olds	690	2	0.33	1380
Parent Survey Cohort 2-3 year olds	320	3	0.33	106
Total .....	.....	.....	.....	1552

In compliance with the requirements of Section 3506(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: OPREinfocollection@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 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,

ACF Reports Clearance Officer.

[FR Doc. 2012-20207 Filed 8-16-12; 8:45 am]

BILLING CODE 4184-22-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2012-N-0873]

Agency Information Collection Activities; Proposed Collection; Comment Request; Bar Code Label Requirement for Human Drug and Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register**

concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the bar code label requirements for human drug and biological products.

DATES: Submit either electronic or written comments on the collection of information by October 16, 2012.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50-400B, Rockville, MD 20850, 301-796-7726, ila.mizrachi@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Bar Code Label Requirement for Human Drug and Biological Products—(OMB Control Number 0910-0537)—Extension

In the **Federal Register** of February 26, 2004 (69 FR 9120), we issued regulations that required human drug product and biological product labels to have bar codes. The rule required bar codes on most human prescription drug products and on over-the-counter (OTC) drug products that are dispensed under an order and commonly used in health care facilities. The rule also required machine-readable information on blood and blood components. For human prescription drug products and OTC drug products that are dispensed under an order and commonly used in health care facilities, the bar code must contain the National Drug Code number for the product. For blood and blood components, the rule specifies the minimum contents of the machine-readable information in a format approved by the Center for Biologics Evaluation and Research Director as blood centers have generally agreed upon the information to be encoded on the label. The rule is intended to help reduce the number of medication errors in hospitals and other health care settings by allowing health care professionals to use bar code scanning equipment to verify that the right drug (in the right dose and right route of administration) is being given to the right patient at the right time.

Most of the information collection burden resulting from the final rule, as calculated in table 1 of the final rule (69 FR at 9149), was a one-time burden that does not occur after the rule's compliance date of April 26, 2006. In addition, some of the information collection burden estimated in the final rule is now covered in other OMB-approved information collection packages for FDA. However, parties may continue to seek an exemption from the bar code requirement under certain, limited circumstances. Section 201.25(d) (21 CFR 201.25(d)) requires submission of a written request for an exemption and describes the contents of such requests. Based on the number of exemption requests we have received, we estimate that approximately 2 exemption requests may be submitted annually, and that each exemption request will require 24 hours to complete. This would result in an annual reporting burden of 48 hours.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
201.25(d)	2	1	2	24	48

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 13, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–20205 Filed 8–16–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0876]

Agency Information Collection Activities; Proposed Collection; Comment Request; Pretesting of Tobacco Communications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on pretesting of tobacco communications.

DATES: Submit either electronic or written comments on the collection of information by October 16, 2012.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–

400B, Rockville, MD 20850, 301–796–5156, Daniel.Gittleson@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether the information will have practical utility; (2) the accuracy of FDA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Pretesting of Tobacco Communications—(OMB Control Number 0910–0674)—Extension

In order to conduct educational and public information programs relating to tobacco use, as authorized by section 903(d)(2)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(D)) and to develop stronger health warnings on tobacco packaging

as authorized by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), it is beneficial for FDA to conduct research and studies relating to the control and prevention of disease as authorized by section 301 of the Public Health Service Act (42 U.S.C. 241(a)). In conducting such research, FDA will employ formative pretests to assess the likely effectiveness of tobacco communications with specific target audiences. The information collected will serve two major purposes. First, as formative research it will provide the critical knowledge needed about target audiences. FDA must first understand critical influences on people’s decisionmaking process when choosing to use, not use, or quit using tobacco products. In addition to understanding the decisionmaking processes of adults, it is also critical to understand the decisionmaking processes among adolescents (ages 13 to 17), where communications will aim to discourage tobacco use before it starts. Knowledge of these decisionmaking processes will be applied by FDA to help design effective communication strategies, messages, and warning labels. Second, as initial testing, it will allow FDA to assess the potential effectiveness of messages and materials in reaching and successfully communicating with their intended audiences. Pretesting messages with a sample of the target audience will allow FDA to refine messages while they are still in the developmental stage. By utilizing appropriate qualitative and quantitative methodologies, FDA will be able to: (1) Better understand characteristics of the target audience—its attitudes, beliefs, and behaviors—and use risk communications; (2) more efficiently and effectively design messages and select formats that have the greatest potential to influence the target audience’s attitudes and behavior in a favorable way; (3) determine the best promotion and distribution channels to reach the target audience with appropriate messages; and (4) expend limited program resource dollars wisely and effectively.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Individual In-Depth Interviews	360	1	360	0.75 (45 minutes)	270
General Public Focus Group Interviews	144	1	144	1.5 hours	216
Intercept Interviews: Central Location	600	1	600	0.25 (15 minutes)	150
Intercept Interviews: Telephone	² 10,000	1	10,000	0.08 (5 minutes)	800
Self-Administered Surveys	2,400	1	2,400	0.25 (15 minutes)	600
Gatekeeper Reviews	400	1	400	0.50 (30 minutes)	200
Omnibus Surveys	2,400	1	2,400	0.17 (10 minutes)	408
Total (General Public)	16,304	.....	.....	.....	2,644
Physician Focus Group Interviews	144	1	144	1.5 hours	216
Total (Physician)	144	.....	.....	.....	216
Total (Overall)	16,448	.....	.....	.....	2,860

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² Brief interviews with callers to test message concepts and strategies following their call-in request to the FDA Center for Tobacco Products 1-800 number.

The number of respondents to be included in each new pretest will vary, depending on the nature of the material or message being tested and the target audience. However, for illustrative purposes, table 1 provides examples of the types of studies that may be administered and estimated burden levels that may be incurred during each year of the 3-year period. Time to read, view, or listen to the message being tested is built into the “Hours per Response” figures.

Dated: August 13, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012-20206 Filed 8-16-12; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: September 21, 2012.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: Report to the Director, NIDCR.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, 10, Bethesda, MD 20892.

Closed: 1:00 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, 10, Bethesda, MD 20892.

Contact Person: Alicia J. Dombroski, Ph.D., Director, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892.

Information is also available on the Institute's/Center's home page: <http://www.nidcr.nih.gov/about>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 13, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012-20275 Filed 8-16-12; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Center for Advancing Translational Sciences Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cures Acceleration Network Review Board.

Date: September 14, 2012.

Time: 8:30 a.m. to 2:30 p.m.

Agenda: Report from the Acting Institute Director.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, Ph.D., Executive Secretary, National Center for

Advancing Translational Sciences, Bethesda, MD 20892, 301-443-3367.

Name of Committee: National Center for Advancing Translational Sciences Advisory Council.

Date: September 14, 2012.

Open: 8:30 a.m. to 2:30 p.m.

Agenda: Report from the Acting Institute Director.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 3:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, Bethesda, MD 20892, 301-443-3367.

Dated: August 13, 2012

Jennifer Spaeth

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012-20273 Filed 8-16-12; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; ZEB1 OSR-D(J1) S T32 Training and R25 Residency and Clinical Fellows Awards Review Meeting.

Date: October 11, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, DEM II, 6707 Democracy Boulevard, Suite 941, Bethesda, MD 20892.

Contact Person: John K. Hayes, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707

Democracy Boulevard, Room 959, Bethesda, MD 20892, 301-451-3398, hayesj@mail.nih.gov.

Dated: August 9, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012-20272 Filed 8-16-12; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of determination.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(3)(B)(i), as amended, as well as the foreign policy and national security interests deemed relevant in these consultations, that paragraphs (iv)(IV), (iv)(V), (iv)(VI), and (i)(VIII) of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B), shall not apply with respect to an alien not otherwise covered by the automatic relief provisions of section 691(b) of the Consolidated Appropriations Act, 2008 or by a more specific Exercise of Authority under section 212(d)(3)(B)(i) of the INA, 8 U.S.C. 1182(d)(3)(B)(i), who meets the specifications of paragraphs (a) through (d) of this determination.

(a) *Alien Qualification:* To qualify under this determination, an alien must have:

(1) Solicited funds or other things of value for;

(2) Solicited any individual for membership in;

(3) Provided material support to; or

(4) Received military-type training from, or on behalf of, an organization described in paragraph (b).

(b) *Organization Qualification.* An organization meets the specifications of paragraph (a) of this determination if, at any time during the alien's activities discussed in paragraph (a), it was a terrorist organization as described in subsection 212(a)(3)(B)(vi)(III), 8 U.S.C. 1182(a)(3)(B)(vi)(III), insofar as that organization:

(1) Is not identified in either Executive Order 13224, as amended, or

otherwise designated by the Secretary of State or the Secretary of the Treasury pursuant to the Specially Designated Nationals List (SDNL), or in lists established by United Nations Security Council Committee pursuant to Resolutions 1267 (1999) or 1988 (2011) concerning Al-Qaida and the Taliban and associated individuals and entities; and

(2) Has at no time targeted U.S. interests or persons, including planned or attempted attacks on U.S. interests or persons; engaged in a pattern or practice of torture, as defined in 18 U.S.C. 2441(d)(1)(A), genocide, as described in 18 U.S.C. 1091(a), or the use of child soldiers, as described in 18 U.S.C. 2242; or been designated a terrorist organization as described in subsections 212(a)(3)(B)(vi)(I) or (II) of the INA, 8 U.S.C. 1182(a)(3)(B)(vi)(I) or (II).

(c) *Additional Qualifications.* To meet the requirements of this determination, the alien must also meet the following specifications:

(1) On or before the date of this Exercise of Authority, was admitted as a refugee or granted asylum, temporary protected status, or adjustment of status under the Nicaraguan Adjustment and Central American Relief Act (NACARA) or the Haitian Refugee Immigration Fairness Act (HRIFA), or granted a similar immigration benefit other than a non-immigrant visa; or

(2) Is the beneficiary of an I-730 Refugee/Asylee Relative Petition filed at any time by such an asylee or refugee.

(d) *Evidentiary Requirements.* An alien must satisfy the relevant agency authority that the alien:

(1) Is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection;

(2) Has undergone and passed all relevant background and security checks;

(3) Has fully disclosed, to the best of his or her knowledge, in all relevant applications and interviews with U.S. government representatives and agents, the nature and circumstances of each instance of solicitation, material support, and military-type training, and any other activity or association falling within the scope of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B);

(4) Has not knowingly provided material support to terrorist activities that targeted noncombatant persons, U.S. citizens, or U.S. interests;

(5) Has not received training that itself poses a risk to the United States or United States interests (e.g., training on production or use of a weapon of mass destruction, as defined by 18 U.S.C.

Section 2332a(c)(2), torture, or espionage);

(6) Poses no danger to the safety and security of the United States;

(7) Is not in removal proceedings or subject to a final order of removal, unless the alien is the beneficiary of an I-730 Refugee/Asylee Relative Petition; and

(8) Warrants an exemption from the relevant inadmissibility provision(s) in the totality of the circumstances.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), which shall ascertain, to its satisfaction and in its discretion, that the particular applicant meets each of the criteria set forth above.

When considering the totality of the circumstances, factors to be considered may include, among others: The nature of the activities committed by the terrorist organization, including the extent to which the activities have targeted noncombatant persons; the alien's awareness of those activities; the amount, type, and frequency of material support or solicitation provided; the length and nature of military-type training provided; the length of time since material support or solicitation was provided, or military-type training was received, and the alien's conduct since that time; and any other relevant factor.

This exercise of authority may be revoked as a matter of discretion and without notice at any time, with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above can inform but shall not control a decision regarding any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person).

This exercise of authority creates no substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with section 212(d)(3)(B)(ii) of the INA, 8 U.S.C. 1182(d)(3)(B)(ii), a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: August 10, 2012.

Janet Napolitano,

Secretary of Homeland Security.

[FR Doc. 2012-20278 Filed 8-16-12; 8:45 am]

BILLING CODE 9110-9M-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0019]

Agency Information Collection Activities: Application for Removal, Form I-243; Revision of a Currently Approved Collection

ACTION: 60-Day Notice.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 16, 2012.

During this 60 day period, USCIS will be evaluating whether to revise the Form I-243. Should USCIS decide to revise Form I-243 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I-243.

Written comments and suggestions regarding items contained in this information collection notice, and especially with regard to the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Office of Policy and Strategy, Laura Dawkins, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may be submitted to DHS via email at uscisfrcomment@dhs.gov and must include OMB Control Number 1615-0019 in the subject box. Comments may

also be submitted via the Federal eRulemaking Portal Web site at <http://www.Regulations.gov> under e-Docket ID number USCIS-2008-0006.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of a currently approved collection. NOTE: On July 18, 2012, a 60-day information collection notice was published in the **Federal Register** at 77 FR 42322 in error. All comments should be submitted to USCIS through this notice.

(2) *Title of the Form/Collection:* Application for Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security*

sponsoring the collection: Form I-243; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The information provided on this form allows the USCIS to determine eligibility for an applicant's request for removal from the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at .50 hours (30 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: <http://www.regulations.gov>.

We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529, Telephone number 202-272-1470.

Dated: August 8, 2012.

Laura Dawkins,

Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012-20250 Filed 8-16-12; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection

Activities: Extension, Without Change, of an Existing Information Collection; Comment Request.

ACTION: 60-Day Notice of Information Collection; I-395; Affidavit in Lieu of Lost Receipt of United States ICE for Collateral Accepted as Security; OMB Control No. 1653-0045.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 16, 2012.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Rich Mattison, Chief, Records Management, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732-4356.

Comments are encouraged and will be accepted for sixty days until October 16, 2012. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of an existing information collection.

(2) *Title of the Form/Collection:* Affidavit in Lieu of Lost Receipt of United States for Collateral Accepted as Security.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (No. Form I-395); U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local, or Tribal Government. Section 404(b) of the Immigration and Nationality Act (8 U.S.C. 1101 note) provides for the reimbursement to States and localities for assistance provided in meeting an immigration emergency. This collection of information allows for State or local governments to request reimbursement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours. Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Rich Mattison, Chief, Records Management, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732-4356. Dated: Aug 8, 2012.

Rich Mattison,

Chief, Records Management, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012-19745 Filed 8-16-12; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5601-N-32]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD publishes a weekly **Federal Register** notice listing unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless. HUD generally publishes this weekly report each Friday. Today's notice announces that due to the size of HUD's next report, the Office of the Federal Register has informed HUD that it cannot accommodate HUD's request to schedule publication of the report on Friday, August 17, 2012. As a result, HUD's next report listing unutilized, underutilized, excess, and surplus Federal property will be published in the **Federal Register** on Wednesday, August 29, 2012.

FOR FURTHER INFORMATION CONTACT:

Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402-3970; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or

call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD publishes a weekly notice in the **Federal Register** listing Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties are reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. HUD's weekly notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Dated: August 9, 2012.

Ann Marie Oliva,

Deputy Assistant Secretary for Special Needs (Acting).

[FR Doc. 2012-20191 Filed 8-16-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2012-N184;
FXES1112020000F2-123-FF02ENEH00]

Draft Environmental Assessment and Draft Habitat Conservation Plan for TransCanada Keystone Pipeline's Gulf Coast Project in Oklahoma

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft Environmental Assessment and draft Habitat Conservation Plan for TransCanada Keystone Pipeline's (Keystone) Gulf Coast Project in Oklahoma, under the National Environmental Policy Act of 1969. Keystone has applied for an incidental take permit under the Endangered Species Act, that would authorize incidental take of the American burying beetle.

DATES: To ensure consideration of your written comments, we must receive them on or before close of business (4:30 p.m. CST) on September 17, 2012.

ADDRESSES: To obtain documents for review, see Reviewing Documents in **SUPPLEMENTARY INFORMATION.**

Comments concerning the application, the draft Environmental Assessment (DEA), or the draft Habitat Conservation Plan (DHCP) should be submitted in writing, by one of the following methods:

Email: Keystone_HCP_OK@fws.gov; or

U.S. mail: Field Supervisor, Oklahoma Ecological Services Field Office, U.S. Fish and Wildlife Service, 9014 E. 21st St., Tulsa, OK 74129.

Please refer to Permit number TE80492A-0 when submitting comments. Please specify if comments are in reference to the DEA, DHCP, or both.

FOR FURTHER INFORMATION CONTACT: Dr. Dixie Porter, at the U.S. Fish and Wildlife Service, Oklahoma Ecological Services Field Office, 9014 E. 21st St., Tulsa, OK 74129, or by phone at 918-581-7458.

SUPPLEMENTARY INFORMATION: Under the National Environmental Policy Act (NEPA), we advise the public that:

1. We have gathered the information necessary to determine impacts and formulate alternatives for the DEA related to the potential issuance of an incidental take permit (ITP) to TransCanada Keystone Pipeline, LP (applicant, Keystone); and

2. The applicant has developed a DHCP as part of the application for an ITP (TE80492A-0), which describes the measures Keystone has agreed to undertake to minimize and mitigate the effects of incidental take of the federally listed American burying beetle (*Nicrophorus americanus*; ABB) to the maximum extent practicable, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The requested ITP, which would be in effect for a period of 50 years if granted, would authorize incidental take of the ABB (covered species) resulting from activities associated with construction, maintenance, operation, and repair (both routine and emergency) of Keystone's Gulf Coast Project and associated activities (covered activities). As described in the DHCP, the proposed incidental take would occur within the ABB's range in Oklahoma as identified by the Service, which includes portions of Creek, Okfuskee, Seminole, Hughes, Coal, Atoka, and Bryan Counties, Oklahoma (permit area). The DEA considers the direct, indirect, and cumulative effects of the proposed action of permit issuance, including the measures that would be implemented to minimize and mitigate such impacts to the maximum extent practicable.

Background

The Keystone XL Pipeline Project was previously proposed by TransCanada,

with a request for a Presidential Permit. The U.S. Department of State (DOS) published a notice of intent (NOI) to prepare an environmental impact statement in the **Federal Register** on January 28, 2009 (74 FR 5019), and public scoping meetings were conducted in connection with the applicant's requested Presidential Permit. The proposed Keystone XL Pipeline Project extended from Canada to the Gulf Coast. A draft environmental impact statement was prepared by the DOS [EIS No. 20110290, Final EIS, DOS] for the Keystone XL Pipeline Project. The Environmental Protection Agency (EPA) published a notice of availability of the Draft Environmental Impact Statement on April 20, 2010 (75 FR 51458). On August 26, 2011, the DOS published a notice of availability (76 FR 53525) of the final EIS and announced public meetings to solicit comments for the Secretary of State's (or her designee) consideration of the Keystone XL Pipeline with a notice that no decision would be made until the completion of a thorough review process. The EPA published its notice of availability of the final EIS in the **Federal Register** on September 2, 2011 (76 FR 54767). A Presidential Memorandum dated February 1, 2012, directed the Department of State to issue a denial of the Keystone XL Pipeline Presidential Permit application (77 FR 5614; February 3, 2012).

Keystone continued to develop the Gulf Coast portion of the project, including working with the Service towards the development of an HCP for the ABB. The Gulf Coast Project in this HCP follows the same route as the previously proposed Keystone XL's Gulf Coast Segment. Because the majority of impacts were previously analyzed in the final EIS developed for the Keystone XL pipeline project, a DEA, that includes the analysis from that EIS by reference, has been prepared in response to the application for an ITP for the ABB.

Proposed Action

The proposed action involves the issuance of an ITP by the Service for incidental take of the ABB associated with the construction, maintenance, operation, and repair of the pipeline and associated facilities occurring within the permit area. To meet the requirements of a section 10(a)(1)(B) ITP, the applicant has developed and proposes to implement its DHCP, which describes the conservation measures TransCanada has agreed to undertake to minimize and mitigate for the impacts of the proposed incidental take of the covered species to the maximum extent practicable, and ensures that incidental

take will not appreciably reduce the likelihood of the survival and recovery of the ABB in the wild.

Other Alternatives Considered

Our proposed action is approving the applicant's DHCP and issuance of an ITP for take associated with the applicant's covered activities. As required by NEPA, the DEA considers the consequences to the human environmental of the proposed HCP and two alternatives; the No Action Alternative and a Reduced Permit Duration Alternative. Under the No Action Alternative, Keystone would not apply for and we would not issue an ITP. The No-Action Alternative does not meet Keystone's need for take authorization and would not provide any conservation benefits for the ABB.

Under the Reduced Permit Duration Alternative, the applicant would employ the same avoidance and minimization measures described under the Proposed Alternative, but they would pursue an ITP only for construction and restoration activities, not to exceed 5 years. This alternative would not meet Keystone's need for incidental take authorization for operation and maintenance activities post-construction. Additionally, this alternative provides less conservation benefit for the covered species than would the Proposed Action.

Reviewing Documents

You may obtain copies of the DEA and DHCP on the Service's Web site at <http://www.fws.gov/southwest/es/Oklahoma/>.

Alternatively, you may obtain CD-ROMs with electronic copies of these documents by writing to Dr. Dixie Porter, Field Supervisor, U.S. Fish and Wildlife Service, 9014 E. 21st St., Tulsa, OK 74129; calling 918-581-7458; or faxing 918-581-7467. A limited number of printed copies of the DEA and DHCP are also available, by request, from Dr. Porter. Copies of the DEA and DHCP are also available for public inspection and review by appointment only, during normal business hours (8 a.m. to 4:30 p.m. CST) at the following locations:

- Department of the Interior, Natural Resources Library, 1849 C. St. NW., Washington, DC 20240;
- U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 6034, Albuquerque, NM 87102; and
- U.S. Fish and Wildlife Service, 9014 E. 21st St., Tulsa, OK 74129.

Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box

1306, Room 6034, Albuquerque, NM 87103.

Persons wishing to review the Keystone XL Pipeline Project final EIS may obtain a copy from the Department of State's Web site at: http://keystonepipeline-xl.state.gov/archive/dos_docs/feis/index.htm.

Public Availability of Comments

All comments we receive become part of the public record. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 et seq.) and its implementing regulations (50 CFR 17.22 and 17.32), and the National Environmental Policy Act (42 U.S.C. 4371 et seq.) and its implementing regulations (40 CFR 1506.6).

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 2012-20349 Filed 8-16-12; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

**[LLWYD03000.L51100000.
GN0000.LVEMK10CW580-WYW-166318]**

Notice of Availability of the Final Environmental Impact Statement for the Lost Creek Uranium In Situ Recovery Project in Sweetwater County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) for the Lost Creek Uranium In Situ Recovery (ISR) Project and by this notice is announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days from the date that the Environmental Protection Agency publishes this notice in the **Federal Register**.

ADDRESSES: Copies of the Lost Creek Uranium ISR Project Final EIS are available for public inspection at:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009;
- Bureau of Land Management, High Desert District Office, 280 Highway 191 North, Rock Springs, Wyoming 82901;
- Bureau of Land Management, Rawlins Field Office, 1300 N. Third Street, Rawlins, Wyoming 82301; and
- Bureau of Land Management, Lander Field Office, 1335 Main Street, Lander, Wyoming 82520.

Interested persons may also review the Final EIS on the Internet at: <http://www.blm.gov/wy/st/en/info/NEPA/documents/rfo/lostcreek.html>.

FOR FURTHER INFORMATION CONTACT: John Russell, Project Manager, telephone: 307-328-4252; address: Bureau of Land Management, Rawlins Field Office, 1300 N. Third Street, P.O. Box 2407, Rawlins, Wyoming 82301; email: Lost_Crk_Mine_WY@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-named individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Development of Federal locatable minerals by private industry is part of the BLM's mineral program under the authority of 43 CFR 3800. The applicant, Lost Creek ISR, LLC (Lost Creek), has filed a plan of operations pursuant to the 43 CFR 3809 regulations to construct a uranium ore recovery plant, an access road to the site, and a pipeline system for the flow of oxidizing leach solution to injection wells and the return of fluids from recovery wells to the recovery plant site; to drill injection, recovery and monitoring wells; and to

construct associated facilities such as parking lots, power lines, etc.

Development and recovery of the uranium consists of dissolving underground uranium-bearing minerals into solution and then bringing the solution to the surface facility for concentration. The Lost Creek ISR Project is located about 40 miles northwest of Rawlins, Wyoming, in Sweetwater County.

The project is located in the following area:

Sixth Principal Meridian

T. 25 N., R. 92 W.,

Sec. 17, S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ N $\frac{1}{2}$, and S $\frac{1}{2}$;

Sec. 18, lots 2 to 4, inclusive, S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;

Sec. 19;

Sec. 20, N $\frac{1}{2}$ N $\frac{1}{2}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, and W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 29, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 30, lots 5 to 9, inclusive, and lots 16 and 17;

Sec. 31, lot 8.

T. 25 N., R. 93 W.,

Sec. 13, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$, S $\frac{1}{2}$ N $\frac{1}{2}$ S $\frac{1}{2}$, and NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 24;

Sec. 25.

The areas described aggregate 3,737 acres of BLM-managed land. The total project area, including both BLM-managed and State lands, is approximately 4,377 acres. The BLM would approve approximately 345 acres of actual surface disturbance. Most of the surface disturbance would be related to construction of pads for wells used to extract uranium in solution from the site. The plant site would comprise approximately 10 acres, including parking space for 50–60 employees. Multiple subsurface ore bodies ranging in depth from 300–700 feet below the surface are found at the site. Each of the three separate production areas containing uranium would be established and mined, one at a time. It is expected that mining operations would last about 8 years. An estimated additional 3 years would be required for startup and closure of the site for a total project length of 11 years. A proposed final reclamation plan for the project area has been submitted. All surface facilities would be removed when the project is completed and the land re-contoured to near predisturbance condition and re-vegetated.

The BLM has selected the Drying Yellowcake On-Site Alternative as the preferred alternative. Under this alternative, a yellowcake drying and packing facility would be constructed and operated at the permit area. As with

the proposed action, yellowcake slurry (30–50 percent solids) would be produced; however, the slurry would be filter-pressed to remove additional water, dried, and packaged on-site. Housing the drying-packing facility within the processing plant would reduce shipments from the site, resulting in fewer transportation-related impacts, fewer wildlife disturbances, and cleaner air quality.

The Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) was published in the **Federal Register** on February 11, 2011 (76 FR 7877). The scoping comments received in response to the NOI were used during the preparation of the Draft EIS to help identify impacts expected as a result of the proposed action and to develop the No Action Alternative, the “Not-Fencing-The-Pattern-Areas” Alternative, and the “Drying-Yellowcake-On-Site” Alternative. A 45-day comment period for the Draft EIS ran from April 27, 2012, through June 11, 2012, as announced in the **Federal Register** on April 27, 2012 (77 FR 25193). The BLM prepared the Final EIS in coordination with the State of Wyoming, Sweetwater County, and Carbon County, which participated as formal cooperating agencies during the EIS process. The BLM also closely coordinated with the United States Fish and Wildlife Service and the Environmental Protection Agency.

Comments received from the public on the Draft EIS and internal BLM review were considered and incorporated as appropriate into the Final EIS. Public comments resulted in the addition of clarifying text, but did not significantly change proposed decisions.

Stephanie A. Connolly,

Acting Associate State Director.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

[FR Doc. 2012–20175 Filed 8–16–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLC0956000 L14200000.BJ0000]

Notice of Filing of Plats

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats; Colorado.

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the official filing of

the survey plat listed below. The plat will be available for viewing at <http://www.glorerecords.blm.gov>.

DATES: The plat described in this notice was filed on July 27, 2012.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

FOR FURTHER INFORMATION CONTACT:

Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

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 supplemental plat of the SW $\frac{1}{4}$ of Section 30, in Township 5 South, Range 83 West, Sixth Principal Meridian, Colorado, was accepted and filed on July 27, 2012.

Randy Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2012–20221 Filed 8–16–12; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI00000–L10200000–MJ0000]

Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The Idaho Falls District RAC will meet in Idaho Falls, Idaho on September 18–19, 2012 for a two-day meeting at the Upper Snake Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho. The first day will begin at 10:30 a.m. and adjourn at 4:30 p.m. The second day will begin at 8:30 a.m. and adjourn around 12:30 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a

variety of planning and management issues associated with public land management in the BLM Idaho Falls District, which covers eastern Idaho.

Items on the agenda will include an overview of current issues affecting the BLM, review and approval of past meeting minutes and a public comment period. Following those discussions, the Council will review the Fisher Bottoms acquisition along the South Fork of the Snake River and travel to the site to discuss and provide the field office with input on how to preserve the site for the public. At 8:30 a.m. on September 19, the RAC will meet again to discuss the sage-grouse amendment process, domestic/bighorn sheep issues, current litigation, the Challis wild horse gather, and review the Curlew/Deep Creeks Travel Management plan. Agenda items and location may change due to weather and other environmental circumstances.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Sarah Wheeler, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone: (208) 524-7550. Email: sawheeler@blm.gov.

Dated: August 9, 2012.

Joe Kraayenbrink,

District Manager, Idaho Falls District.

[FR Doc. 2012-20219 Filed 8-16-12; 8:45 am]

BILLING CODE 4310-GG-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to seek approval to continue the collection of information for the contractor eligibility, and the

Abandoned Mine Land (AML) Contractor Information form. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned clearance number 1029-0119.

DATES: Comments on the proposed information collection must be received by October 16, 2012, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtrelease@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease, at (202) 208-2783 or by email at jtrelease@osmre.gov.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collection that OSM will be submitting to OMB for approval. This collection is contained in 30 CFR 874.16 and the Abandoned Mine Land Contractor Information form. OSM will request a 3-year term of approval for each information collection activity. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection is 1029-0119. Responses are required to obtain a benefit.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Title: 30 CFR 874.16—Contractor eligibility, and the AML Contractor Information form.

OMB Control Number: 1029-0119.

Summary: 30 CFR 874.16 requires that every successful bidder for an AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Further, the regulation requires the eligibility to be confirmed by OSM's automated AVS and the contractor must be eligible under the regulations implementing Section 510(c) of the Surface Mining Act to receive permits to conduct mining operations. The AML Contractor Information form provides a tool for OSM and the States/Indian tribes to help them prevent persons with outstanding violations from conducting further mining or AML reclamation activities in the State.

Bureau Form Number: None.

Frequency of Collection: Once per contract.

Description of Respondents: AML contract applicants and State and tribal AML authorities.

Total Annual Responses: 279 bidders and 46 State responses.

Total Annual Burden Hours: 169.

Dated: August 7, 2012.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2012-19836 Filed 8-16-12; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval to continue the collection of information for our petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations. This information collection activity was previously

approved by the Office of Management and Budget (OMB), and assigned clearance number 1029–0098.

DATES: Comments on the proposed information collection activity must be received by October 16, 2012, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtrelease@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request John Trelease at (202) 208–2783 or by email at jtrelease@osmre.gov.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies an information collection that OSM will be submitting to OMB for renewed approval. This collection is contained in 30 CFR Part 769—Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations. OSM will request a 3-year term of approval for this information collection activity. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for Part 769 is 1029–0098. Responses are required to obtain a benefit.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: 30 CFR part 769—Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations.

OMB Control Number: 1029–0098.

Summary: This Part establishes the minimum procedures and standards for designating Federal lands unsuitable for certain types of surface mining operations and for terminating designations pursuant to a petition. The information requested will aid the regulatory authority in the decision making process to approve or disapprove a request.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: People who may be adversely affected by surface mining on Federal lands.

Total Annual Responses: 1.

Total Annual Burden Hours: 1,000 hours.

Dated: August 7, 2012.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2012–19837 Filed 8–16–12; 8:45 am]

BILLING CODE 4310–05–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committees on Rules of Appellate, Bankruptcy, and Criminal Procedure, and the Federal Rules of Evidence

AGENCY: Advisory Committees on Rules of Appellate, Bankruptcy, and Criminal Procedure, and the Federal Rules of Evidence; Judicial Conference of the United States.

ACTION: Notice of proposed amendments and open hearings.

SUMMARY: The Advisory Committees on Rules of Appellate, Bankruptcy, and Criminal Procedure, and Rules of Evidence have proposed amendments to the following rules:

Appellate Rule: 6.

Bankruptcy Rules: 1014, 7004, 7008, 7012, 7016, 7054, 8001–8028, 9023, 9024, 9027, and 9033, and Official Forms 3A, 3B, 6I, 6J, 22A–1, 22A–2, 22B, 22C–1 and 22C–2.

Criminal Rules: 5 and 58.

Evidence Rule 801 and 803.

Public hearings are scheduled to be held on the amendments to:

- Appellate Rules in Chicago, Illinois, on January 18, 2013, and in Washington, DC, on February 1, 2013;
- Bankruptcy Rules in Chicago, Illinois, on January 18, 2013, and in Washington, DC, on February 1, 2013;
- Criminal Rules in Boston, Massachusetts, on January 4, 2013, and in Washington DC, on January 28, 2013; and

- Evidence Rules in Boston, Massachusetts, on January 4, 2013, and in Washington, DC, on January 22, 2013.

Those wishing to testify should contact the Secretary at the address below in writing at least 30 days before the hearing. All written comments and suggestions with respect to the proposed amendments must be placed in the hands of the Secretary as soon as convenient and not later than February 15, 2013. They can be sent by one of the following three ways: by mail to Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, Washington, DC 20544; by electronic mail at Rules_Comments@ao.uscourts.gov; or by facsimile to (202) 502–1755. In accordance with established procedures all comments submitted are available for public inspection.

The text of the proposed rules amendments and the accompanying Committee Notes can be found at the United States Federal Courts' Web site at <http://www.uscourts.gov/rulesandpolicies/rules.aspx/>.

FOR FURTHER INFORMATION CONTACT:

Benjamin J. Robinson, Deputy Rules Officer and Counsel, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: August 15, 2012.

Benjamin J. Robinson,

Deputy Rules Officer and Counsel.

[FR Doc. 2012–20283 Filed 8–16–12; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

[OMB No. 1121–0065]

Agency Information Collection Activities; Existing Collection; Comments Requested: Extension of a Currently Approved Collection; National Corrections Reporting Program

ACTION: 60-Day notice of information collection under review.

The Department of Justice (DOJ), Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 16, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Elizabeth Ann Carson, Ph.D., Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (phone: 202-616-3496).

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* National Corrections Reporting Program (NCRP). The collection includes the forms: Prisoner Admission Report, Prisoner Release Report, Parole Release Report, Prisoners in Custody at Yearend Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the*

collection: Form number(s): NCRP-1A, NCRP-1B, NCRP-1C, and NCRP-1D. Corrections Statistics Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The National Corrections Reporting Program (NCRP) is the only national data collection furnishing annual individual-level information for state prisoners at four points in the incarceration process: prison admission; prison release; annual yearend prison custody census; and discharge from parole/community corrections supervision. BJS, the U.S. Congress, researchers, and criminal justice practitioners use these data to describe annual movements of adult offenders through state correctional systems, as well as to examine long term trends in time served in prison, demographic and offense characteristics of inmates, sentencing practices in the states that submit data, transitions between incarceration and community corrections, and recidivism. Providers of the data are personnel in the states' Departments of Corrections and Parole, and all data are submitted on a voluntary basis. The NCRP collects the following administrative data on each inmate in participating states' custody:

- County of sentencing
- State inmate identification number
- Dates of: Birth; prison admission; prison release; parole discharge; parole eligibility hearing; projected prison release; mandatory prison release
- First and last names
- Demographic information: sex; race; Hispanic origin; education level
- Offense type and number of counts per inmate for a maximum of three convicted offenses per inmate
- Prior time spent in prison and jail, and prior felony convictions
- Total sentence length imposed
- Additional offenses and sentence time imposed since prison admission
- Type of facility where inmate is serving sentence (for yearend custody census records only, the name of the facility is requested)
- Type of prison admission
- Type of prison release
- Whether inmate was AWOL/escape during incarceration
- Agency assuming custody of inmate released from prison (parole records only)
- Supervision status prior to discharge from parole and type of discharge

In addition, BJS is requesting OMB clearance to add the following items to

the NCRP collection, all of which are likely available from the same databases as existing data elements, and should therefore pose minimal additional burden to the respondents, while greatly enhancing BJS' ability to better characterize the corrections systems and populations it serves:

- Date and type of parole admission
- Location of parole discharge or parole office
- FBI identification number
- Prior military service, date and type of last discharge

BJS uses the information gathered in NCRP in published reports and statistics. The reports will be made available to the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, others interested in criminal justice statistics, and the general public via the BJS Web site.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* BJS anticipates 57 respondents to NCRP for report year 2012: 50 state respondents; the California Juvenile Justice Division; and six separate state parole boards. Each respondent currently submitting NCRP data will require an estimated 28 hours of time to supply the information for their annual caseload and an additional 3 hours documenting or explaining the data for a total of 1,200 hours. For the 15 states which have never submitted data or are returning to NCRP submission following a lapse of several years, the total first year's burden estimate is 933 hours, which includes the time required for developing or modifying computer programs to extract the data, performing and checking the extracted data, and submitting it electronically to BJS' data collection agency via SFTP. The total burden for all 57 NCRP data providers is 2,133 hours for report year 2012. Starting with report year 2013, this burden will decrease to 1,326 hours since all states will have data extract programs created and need only make minor modifications to obtain report year 2013 data. All states submit data via a secure file transfer protocol (SFTP) electronic upload.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,133 total burden hours associated with this collection for report year 2013.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution

Square, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012-20180 Filed 8-16-12; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Amendment to the Consent Decree Under the Clean Air Act

Notice is hereby given that on August 13, 2012, pursuant to 28 CFR 50.7, a proposed Amendment to the Consent Decree ("Amendment") in the matter of *United States v. Commonwealth of Pennsylvania, et al.*, Civil Action No. 4:10-cv-02672-CCC, was lodged with the United States District Court for the Middle District of Pennsylvania.

As a part of the Consent Decree in this matter, the Pennsylvania Department of Corrections and Department of General Services (collectively, the "Commonwealth") agreed to control particulate matter emissions at its Huntingdon, Pennsylvania facility ("the Huntingdon facility") by either shutting down coal-fired boilers, installing air emission controls on the existing unit, or converting the coal-fired boilers to natural gas-fired boilers by June 30, 2012. The Commonwealth did not meet the deadline imposed in the Consent Decree for the Huntingdon facility. The proposed Amendment requires the Commonwealth to either install new units with pollution controls or convert existing units to natural gas fired units by June 30, 2013. The Commonwealth will also pay a civil of \$39,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Commonwealth of Pennsylvania, et al.*, D.J. Ref. No. 90-5-2-1-09099.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or by faxing or emailing a request to

EESCDCopy.ENRD@usdoj.gov, fax number (202) 514-0097, phone confirmation number (202) 514-5271. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$3.00 (25 cents per page reproduction cost) payable to the U.S. Treasury, or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012-20246 Filed 8-16-12; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110-0021]

Proposed Collection, Comments Requested: FBI National Academy Post-Course Questionnaire for Graduates and FBI National Academy Post-Course Questionnaire for Supervisors of Graduates; FBI National Academy Level III Evaluation; Approval for a Reinstated Collection

ACTION: 30-Day notice of information collection under review.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Training Division's Office of Technology, Research, and Curriculum Development (OTRCD) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until October 16, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments (especially on the estimated public burden or associated response time), suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact *Laleatha B. Goode, Management and Program Analyst for the Evaluation Program, Federal Bureau of Investigation, Training Division, Curriculum Planning and Support Unit, FBI Academy, Quantico, Virginia 22135 or facsimile at (703) 632-3111.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of

information are encouraged. Your comments should address one or more of the following three points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

1. *Type of Information Collection:* Approval of a reinstated collection.

2. *Title of the Forms:*

FBI National Academy Post-Course Questionnaire for Graduates.

FBI National Academy Post-Course Questionnaire for Supervisors of Graduates.

3. *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:* Form Number: 1110-0021.

Sponsor: Training Division of the Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

4. *Affected Public who will be asked or required to respond, as well as a brief abstract:*

Primary: FBI National Academy graduates and their identified supervisors that represents state and local police and sheriffs' departments, military police organizations, and federal law enforcement agencies from the United States and over 150 foreign nations.

Brief Abstract: This collection is requested by FBI National Academy. These surveys have been developed that will measure the effectiveness of services that the FBI National Academy provides and will utilize the graduates and their supervisors' comments to improve upon the current process.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

There are approximately 2,000 FBI National Academy graduates that will respond to the FBI National Academy Post-Course Questionnaire for Graduates. It is predicted that we will

receive a 75% respond rate. The average response time for reading the directions for the FBI National Academy Post-Course Questionnaire for Graduates for the FBI National Academy graduates is estimated to be 2 minutes; time to complete the survey is estimated to be 30 minutes.

There are approximately 2,000 FBI National Academy graduates who have identified their supervisors that will respond to the FBI National Academy Post-Course Questionnaire for Supervisors of Graduates. It is predicted that we will receive a 70% respond rate. The average response time for reading the directions for the FBI National Academy Post-Course Questionnaire for Supervisors of Graduates for the supervisors is estimated to be 2 minutes; time to complete the survey is estimated to be 30 minutes.

The total hour burden for both surveys is 2,088 hours.

6. An estimate of the total public burden (in hours) associated with the collection:

The average hour burden for completing all the surveys combined is 3,088 hours.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Two Constitution Square, 145 N Street, NE., Room 2E-508, 145 N Street, NE., Washington, DC 20530.

Dated: August 13, 2012.

Jerri Murray,
Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012-20186 Filed 8-16-12; 8:45 am]

BILLING CODE 4410-02-P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110-0045]

Agency Information Collection Activities; Proposed Collection, Comments Requested; Customer Satisfaction Assessment

ACTION: 30-day notice of information collection under review.

The Department of Justice, Federal Bureau of Investigation, Laboratory Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information

collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until September 17, 2012. This process is conducted in accordance with 5 CFR 1320.10.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Catherine E. Theisen, Quality Manager, FBI Laboratory, 2501 Investigation Parkway, Quantico, Virginia 22135.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including the use of automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of information collection:* Customer survey.
2. *The title of the form/collection:* Customer Satisfaction Assessment.
3. *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form (form number to be assigned by the forms desk); Laboratory Division, Federal Bureau of Investigation, Department of Justice.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary—Local and state law enforcement agencies. This collection is needed to evaluate the quality of services provided by the FBI Laboratory.
5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there will be 5,000 respondents at 5 minutes per form.

6. *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 416 hours annual burden associated with this information collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Justice Management Division, United States Department of Justice, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E-508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012-20187 Filed 8-16-12; 8:45 am]

BILLING CODE 4410-02-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Green Technologies and Practices Survey

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, "Green Technologies and Practices Survey," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before September 17, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, <http://www.reginfo.gov/public/do/PRAMain>, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Telephone: 202-395-6929/Fax: 202-395-6881 (these are not toll-free numbers), email: OIRA_submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202-693-

4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks OMB approval for the BLS to re-initiate a data collection on occupational employment and wages related to green technologies and practices used by U.S. businesses. The Green Technologies and Practices survey collects data on the use of green technologies and processes at establishments, and occupational employment and wages for employees who spend more than 50 percent of their time engaged in green practices. This special topic survey will be conducted occasionally to collect information on employees engaged in green technologies and practices, the second component of the BLS Green Jobs definition.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220-0184. For additional information, see the related notice published in the **Federal Register** on May 11, 2012 (77 FR 27798).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220-0184. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-BLS.

Title of Collection: Green

Technologies and Practices Survey.

OMB Control Number: 1220-0184.

Affected Public: Federal Government; State, Local, and Tribal Governments; and Private Sector—businesses or other for profits and not-for profit institutions.

Total Estimated Number of Respondents: 26,251.

Total Estimated Number of Responses: 26,251.

Total Estimated Annual Burden

Hours: 13,126.

Total Estimated Annual Other Costs Burden: \$0.

Dated: August 13, 2012.

Linda Watts Thomas,

Assistant Departmental Clearance Officer.

[FR Doc. 2012-20193 Filed 8-16-12; 8:45 am]

BILLING CODE 4510-26-P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request approval of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Interested persons are invited to send comments regarding the burden or any other aspect of this collection of information requirements by October 16, 2012.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science

Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by email to splimpto@nsf.gov.

Comments: Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT:

Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292-7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title: Grantee Reporting Requirements for the Research Experiences for Undergraduates (REU) Program.

OMB Approval Number: 3145-New.

Expiration Date: Not applicable.

Overview of This Information Collection

The Research Experiences for Undergraduates (REU) Reporting Module is a component of the NSF Project Reports System that is designed to gather information about students participating in Research Experiences for Undergraduates (REU) Sites and Supplements projects. All NSF projects are required to use the FastLane Project Reports System for developing and submitting annual and final project reports. If NSF cannot collect information about undergraduate participants in undergraduate research experiences, NSF will have no other means to consistently document the number and diversity of participants, types of participant involvement in the research, and types of institutions represented by the participants.

NSF is committed to providing program stakeholders with formation

regarding the expenditure of taxpayer funds on these types of experiences, which provide training for postsecondary students in basic and applied research in STEM.

Consult With Other Agencies & the Public

NSF has not consulted with other agencies but has gathered information from its grantee community through attendance at PI conferences. A request for public comments will be solicited through announcement of data collection in the **Federal Register**.

Background

All NSF grantees are required to use the FastLane Project Reports System for reporting progress, accomplishments, participants, and activities annually and at the conclusion of their project. Information from annual and final reports provides yearly updates on project inputs, activities, and outcomes for agency reporting purposes. If project participants include undergraduate students supported by the Research Experiences for Undergraduates (REU) Sites Program or by an REU Supplement, then the grantees and their students are required to complete the REU Reporting Module.

Respondents: Individuals (Principal Investigators and REU undergraduate student participants).

Number of Principal Investigator Respondents: 2,000.

Burden on the Public: 650 total hours.

Number of REU Student Participant Respondents: 7,250.

Burden on the Public: 1,810 total hours.

Dated: August 14, 2012.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2012-20255 Filed 8-16-12; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC-2012-0166]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public

comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC's Policy Statement Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production and Utilization Facilities

2. *Current OMB approval number:* 3150-0163.

3. *How often the collection is required:* On occasion, when a State wishes to observe NRC inspections or perform inspections for the NRC.

4. *Who is required or asked to report:* Nuclear Power Plant Licensees, Materials Security Licensees and those States interested in observing or performing inspections.

5. *The number of annual respondents:* 55.

6. *The number of hours needed annually to complete the requirement or request:* 1,000.

7. *Abstract:* States are involved and interested in monitoring the safety status of nuclear power plants and radioactive materials. This involvement is, in part, in response to the States' public health and safety responsibilities and, in part, in response to their citizens' desire to become more knowledgeable about the safety of nuclear power plants and radioactive materials. States have identified NRC inspections as one possible source of knowledge for their personnel regarding plant and materials licensee activities, and the NRC, through the policy statement on Cooperation with States, has been amenable to accommodating the States' needs in this regard. Additionally, the NRC has entered into reimbursable Agreements with certain States under Section 274i of the Act, as amended, to employ their resources to conduct radioactive materials security inspections against NRC Orders.

Submit, by October 16, 2012, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated

collection techniques or other forms of information technology?

The public may examine and have copied for a fee, publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC-2012-0166. You may submit your comments by any of the following methods: Electronic comments: Go to <http://www.regulations.gov> and search for Docket No. NRC-2012-0166. Mail comments to the NRC Clearance Officer, Tremaine Donnell (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by telephone at 301-415-6258, or by email to INFOCOLLECTS.Resource@NRC.GOV.

Dated at Rockville, Maryland, this 9th day of August, 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012-20183 Filed 8-16-12; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC-2012-0081]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently

submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on April 30, 2012 (77 FR 25505).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Request for Information Pursuant to 10 CFR 50.54(f) Regarding Recommendations 2.1, 2.3, and 9.3, of the Near-Term Task Force Review of insights from the Fukushima Dai-Ichi Event.

3. *Current OMB approval number:* 3150-0211.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* Once.

6. *Who will be required or asked to report:* 104 power reactor licensees, 2 reactors in the process of resuming licensing, and 2 Combined License applicants (2 units each).

7. *An estimate of the number of annual responses:* 525.3.

8. *The estimated number of annual respondents:* 110.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 457,502 hours.

10. *Abstract:* Following events at the Fukushima Dai-Ichi nuclear power plant resulting from the March 11, 2011, earthquake and subsequent tsunami, and in response to requirements contained in Section 402 of the Consolidated Appropriations Act (Pub. L. 112-074), the NRC sought an expedited clearance from OMB to allow the collection of information from power reactor licensees pursuant to 10 CFR 50.54(f). The OMB approved this clearance, which will expire on September 30, 2012. The NRC has resubmitted this collection to the OMB under the normal clearance processes. The information requested includes seismic and flooding hazard reevaluations to determine if further regulatory action is necessary, walkdowns to confirm compliance with the current licensing basis and provide input to the hazard reevaluations, and analysis of the Emergency Preparedness capability with respect to staffing and communication ability during a prolonged multiunit event.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 17, 2012.

Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150-0211), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to Chad_S_Whiteman@omb.eop.gov or submitted by telephone at 202-395-4718.

The NRC Clearance Officer is Tremaine Donnell, 301-415-6258.

Dated at Rockville, Maryland, this 9th day of August, 2012.

For the Nuclear Regulatory Commission.
Tremaine Donnell,
NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012-20184 Filed 8-16-12; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC-2012-0182]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Nuclear Material Events Database (NMED) for the Collection of Event Report, Response, Analyses, and Follow-up Data on Events Involving the Use of Atomic Energy Act (AEA) Radioactive Byproduct Material.

2. *Current OMB approval number:* 3150-0178.

3. *How often the collection is required:* On occasion. Agreement States are requested to provide copies of licensee nuclear material event reports electronically or by hard copy to the NRC within 30 days of receipt from their licensee. In addition, Agreement States are requested to report events that may pose a significant health and safety hazard to the NRC Headquarters Operations Officer within 24 hours of notification by an Agreement State licensee.

4. *Who is required or asked to report:* Current Agreement States and any State receiving Agreement State status in the future.

5. *The number of annual respondents:* 37.

6. *The number of hours needed annually to complete the requirement or request:* 745.5 hours.

7. *Abstract:* NRC regulations require NRC licensees to report incidents and events involving the use, transportation and security of radioactive byproduct material, and source material, such as those involving radiation overexposures, leaking or contaminated sealed source(s), release of excessive contamination of radioactive material, lost or stolen radioactive material, equipment failures, abandoned well logging sources, and medical events. Agreement State licensees are also required to report these events to their individual Agreement State regulatory authorities under compatible Agreement State regulations. The NRC is requesting that the Agreement States provide information to NRC on the initial notification, response actions, and follow-up investigations on events involving the use (including suspected theft or terrorist activities) of nuclear materials regulated pursuant to the Atomic Energy Act. The event information should be provided in a uniform electronic format, for assessment and identification of any facilities/site specific or generic safety concerns that could have the potential to impact public health and safety. The identification and review of safety concerns may result in lessons learned, and may also identify generic issues for further study which could result in proposals for changes or revisions to technical or regulatory designs,

processes, standards, guidance, or requirements.

Submit, by October 16, 2012, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee, publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC-2012-0182. You may submit your comments by any of the following methods: Electronic comments: Go to <http://www.regulations.gov> and search for Docket No. NRC-2012-0182. Mail comments to the NRC Clearance Officer, Tremaine Donnell (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by telephone at 301-415-6258, or by email to INFOCOLLECTS.Resource@NRC.GOV.

Dated at Rockville, Maryland, this 9th day of August, 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012-20185 Filed 8-16-12; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2012-0194; IA-12-029]

Order Prohibiting Involvement in NRC-Licensed Activities; In the Matter of Mr. Joseph Quintanilla

I

Mr. Joseph Quintanilla is a radiographer who was formerly employed by Quality Inspection and Testing (QIT or Licensee), a radiography company whose corporate offices are located in New Iberia, Louisiana. QIT holds an Agreement State license issued by the State of Louisiana (L-11238-L01) and was operating under a general license issued pursuant to 10 CFR 150.20 at a temporary jobsite near Rock Springs, Wyoming, on October 27, 2010.

II

On October 27, 2010, the U.S. Nuclear Regulatory Commission (NRC) conducted a safety and security inspection of the use of byproduct material for industrial radiographic operations conducted under QIT's general license issued pursuant to 10 CFR 150.20. When approaching QIT's radiography truck, the inspector observed the radiography camera outside the truck (unsecured) with both the radiographer (Mr. Quintanilla) and the assistant radiographer inside the truck; thus neither man was maintaining surveillance over the camera and the camera was not secured. When Mr. Quintanilla and the assistant radiographer emerged from the darkroom on the truck, about 2 minutes later, neither individual was wearing any personnel monitoring equipment (film badge, pocket dosimeter or alarm ratemeter). Mr. Quintanilla stated he forgot to wear his personnel monitoring equipment while conducting radiography but that his dosimetry was in the truck. The inspector observed Mr. Quintanilla retrieve all three of his required personnel monitoring devices. During a conference call with QIT managers in January 2011, QIT informed the NRC that Mr. Quintanilla told QIT that the camera was left unattended for only a few seconds after the wind blew the door to the darkroom closed (both Mr. Quintanilla and the assistant radiographer were inside the darkroom). This conflicted with the inspector's observations that both men were in the darkroom for about 2 minutes before emerging. As a result of this inspection, the NRC's Office of Investigation (OI), Region IV initiated an investigation (OI Report 04-2011-031) to determine the facts and circumstances surrounding the

inspection and whether Mr. Quintanilla provided inaccurate information to QIT.

In his OI interview, Mr. Quintanilla stated that the camera was unattended for about 5 minutes, and Mr. Quintanilla denied providing information to QIT that the camera was only unattended for a few seconds because the wind blew the door shut. Mr. Quintanilla stated he asked the assistant radiographer to leave the darkroom and to watch the radiography camera, but the assistant did not go and Mr. Quintanilla did not ensure that the assistant went. Mr. Quintanilla also admitted to knowingly conducting radiographic operations without wearing his film badge, but he claimed that he was wearing his pocket ion chamber and alarming ratemeter. By letter dated June 5, 2012 [Reference redacted, not publicly available] the NRC informed Mr. Quintanilla that the NRC was considering escalated enforcement action for apparent violations of the NRC's deliberate misconduct rule, 10 CFR 30.10. The June 5, 2012, letter identified apparent violations of the deliberate misconduct rule, specifically apparent violations of 10 CFR 30.10(a)(1) were identified. The 10 CFR 30.10(a)(1) apparent violation was related to Mr. Quintanilla's actions which resulted in QIT being in violation of 10 CFR 20.1802 associated with leaving the radiography camera, unattended and unsecured, and 10 CFR 34.47(a) for failing to wear the required dosimetry when conducting radiographic operations. The NRC's June 5th letter provided Mr. Quintanilla the opportunity to request a predecisional enforcement conference (PEC), or request alternative dispute resolution (ADR) with the NRC in an attempt to resolve issues associated with these apparent violations. During a June 13, 2012 conference call between Mr. Quintanilla and NRC staff, Mr. Quintanilla indicated that he would like to participate in a predecisional enforcement conference. A PEC was conducted on June 22, 2012.

During the PEC, Mr. Quintanilla indicated that he was aware the camera was outside of the dark room and did not contest that apparent violation. Mr. Quintanilla maintained his position that he was wearing his pocket dosimeter and his alarm ratemeter while conducting radiography, but he stated he left his film badge in Utah and was not wearing it during radiography. This conflicted with the inspector's observation that Mr. Quintanilla retrieved his film badge, pocket dosimeter, and alarm ratemeter from the truck when the inspector requested to see his dosimetry. Mr. Quintanilla maintained that he never talked with

QIT managers about the results of the inspection.

Based on the results of the inspection and the OI investigation, and information provided during the predecisional enforcement conference, the NRC has concluded that Mr. Quintanilla engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1) in two instances. First, he caused the licensee to be in violation of 10 CFR 20.1802 related to leaving the camera, containing a quantity of concern, unattended and unsecured. A second example of his deliberate misconduct involved his failure to wear all the required dosimetry while conducting radiography (specifically, at the very least he failed to wear his film badge).

III

Mr. Joseph Quintanilla, a former employee of Quality Inspection and Testing (QIT), has engaged in deliberate misconduct (in violation of 10 CFR 30.10) that has caused the Licensee to be in violation of 10 CFR 20.1802 and 10 CFR 34.47(a). QIT was required to follow those requirements by the general license issued to it pursuant to 10 CFR 150.20. The NRC must be able to rely on the Licensee and its employees to act with integrity and comply with NRC requirements. Mr. Quintanilla's action in causing QIT to violate 10 CFR 20.1802, and 10 CFR 34.47(a) raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Joseph Quintanilla were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety, and interest require that Mr. Joseph Quintanilla be prohibited from any involvement in NRC-licensed activities for a period one year from the effective date of this Order. Additionally, Mr. Joseph Quintanilla is required to notify the NRC of his first employment in NRC-licensed activities for a period of one year following the prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 30.10

It is hereby ordered that:

1. Mr. Joseph Quintanilla is prohibited for one year, from the

effective date of this Order, from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Joseph Quintanilla is currently involved with another licensee in NRC-licensed activities, he must cease those activities no later than the effective date of this Order, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of one year after the one year period of prohibition has expired, Mr. Joseph Quintanilla shall, within 20 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Joseph Quintanilla of good cause.

V

In accordance with 10 CFR 2.202, Mr. Joseph Quintanilla and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of the date of the Order. In addition, Mr. Joseph Quintanilla and any other person adversely affected by this Order may request a hearing on this Order within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to

submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 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 the NRC guidance available on the NRC's 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.

If a person other than Mr. Quintanilla requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date this Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 10th day of August, 2012.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,
Director, Office of Enforcement.

[FR Doc. 2012-20230 Filed 8-16-12; 8:45 am]

BILLING CODE 7590-01-P

POSTAL SERVICE

Transfer of Outbound Single-Piece First-Class Mail International Packages and Rolls to Competitive Product List

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service hereby provides notice that it has filed a request with the Postal Regulatory Commission to transfer Outbound Single-Piece First-Class Mail International Packages (Small Packages) and Rolls from the market-dominant product list to the competitive product list.

DATES: *Effective date:* August 17, 2012.

FOR FURTHER INFORMATION CONTACT:

Caroline Brownlie, 202-268-3010.

SUPPLEMENTARY INFORMATION: On August 10, 2012, the United States Postal Service® filed with the Postal Regulatory Commission a *Request of the United States Postal Service* to transfer Outbound Single-Piece First-Class Mail Packages (Small Packages) and Rolls from the Mail Classification Schedule's Market-Dominant Product List to its Competitive Product List, pursuant to 39 U.S.C. 3642. The transfer would take place in two steps: First, Outbound Single-Piece First-Class Mail International Packages (Small Packages) and Rolls will be removed from the market-dominant product list; and second, a nearly identical new product, titled "First-Class Package International Service™" (FCPIS), will be added to the competitive product list. Documents pertinent to this request are available at <http://www.prc.gov>, Docket No. MC2012-44.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012-20181 Filed 8-16-12; 8:45 am]

BILLING CODE 7710-12-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67648; File No. SR-OPRA-2012-04]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Implement a New Fee for "Non-Display Applications"

August 14, 2012.

Pursuant to Section 11A of the Securities Exchange Act of 1934

(“Act”)¹ and Rule 608 thereunder,² notice is hereby given that on August 1, 2012, the Options Price Reporting Authority (“OPRA”) submitted to the Securities and Exchange Commission (“Commission”) an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (“OPRA Plan”).³ The proposed amendment would implement a new fee for “Non-Display Applications.” The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

I. Description and Purpose of the Plan Amendment

The purpose of the proposed amendment is to implement a new fee for “Non-Display Applications.” OPRA proposes to define the term “Non-Display Application” in a new footnote to its Fee Schedule. The definition would state that a “Non-Display Application” is an application used by a Professional Subscriber that: (i) Is capable of accessing OPRA market data, (ii) does not display the data in a form for direct use by a human being and (iii) is used for purposes of generating orders and/or quotations on an automated basis for purposes other than complying with the Rules of one or more of the OPRA Participant Exchanges. The definition would state that the term includes any application that is used for “black box” trading, automated trading, algorithmic trading and/or program trading. The definition would also state that the term does not include any application that is used only to generate two-sided continuous quotations, in fulfillment of the obligation to act in a market-making capacity pursuant to the Rules of one or more of the OPRA Participant Exchanges, of a Professional Subscriber that has been designated by such Exchange or Exchanges to act as a dealer/specialist for all purposes under the Securities Exchange Act of 1934 and

the Rules and Regulations thereunder,⁴ and that the term also does not include an application that is used solely to perform surveillance, risk management or portfolio management functions in support of a firm’s trading operations.⁵

The new fee would be payable by Professional Subscribers⁶ that receive access to OPRA Data via data feed transmission, either from an OPRA Vendor or from OPRA’s processor, for use in a Non-Display Application.⁷ The fee would be payable on a “per installation” basis—that is, one fee would be payable for each Non-Display Application (sometimes referred to in this filing as a “trading engine”) that receives a data feed transmission. The term “installation” would be defined in a footnote to OPRA’s Fee Schedule as follows: “An ‘installation’ is a system of one or more servers operating as a unit to generate orders and/or quotations. Multiple servers may operate together to constitute an ‘installation.’ Conversely, two or more ‘installations’ may reside on a single server or network if each generates a separate stream of orders and/or quotations.” OPRA proposes that the new Non-Display Application Fee be \$500/installation/month, with an “Enterprise Fee” alternative of \$7500/month that would permit a Professional Subscriber to receive access to OPRA Data for use in an unlimited number of Non-Display Application installations.

⁴ Market-makers use “autoquote” applications to fulfill their obligation under Exchange rules to generate two-sided continuous quotations. These applications would be within the definition of the term “Non-Display Application” if this language were not included in the definition. OPRA believes that it would not be fair to market-makers to impose a new fee on them for performing an obligation that has existed for many years and that exists to provide liquidity to the markets of the Exchanges.

⁵ OPRA believes that it would not be fair to impose a new fee on the use of applications that perform these support and monitoring functions.

⁶ OPRA defines a “Subscriber,” in general, as an entity or person that receives OPRA Data but does not redistribute it to third parties, and a “Professional Subscriber” as any Subscriber that does not qualify as a “Nonprofessional Subscriber.” In essence, a Nonprofessional Subscriber is an individual person that uses OPRA Data for personal, non-business use.

⁷ To receive OPRA Data via a data feed transmission, a Subscriber must enter into a Professional Subscriber Agreement directly with OPRA and either a “Direct Circuit Connection Rider to Professional Subscriber Agreement” (if the Professional Subscriber receives the data feed transmission directly from OPRA’s processor) or a “Indirect (Vendor Pass-Through) Circuit Connection Rider to Professional Subscriber Agreement” (if the Professional Subscriber receives the data feed transmission from an OPRA Vendor). OPRA’s forms of Professional Subscriber Agreement, Direct Circuit Connection Rider to Professional Subscriber Agreement and Indirect (Vendor Pass-Through) Circuit Connection Rider to Professional Subscriber Agreement are all posted on OPRA’s Web site, www.opradata.com.

Under OPRA’s Fee Schedule as currently in effect, the OPRA fees that apply to a Non-Display Application would depend on the number of servers in the trading engine that receive OPRA Data, whether the trading engine receives OPRA Data directly from OPRA’s processor (*i.e.*, via a “direct connect”) or from an OPRA Vendor (*i.e.*, via, an “indirect connect”) and whether the Professional Subscriber is already paying the OPRA Indirect Access Fee. A typical trading engine may include multiple servers, several of which are enabled to receive access to OPRA Data. For example, if a trading engine is comprised of four servers and the Professional Subscriber is already paying the OPRA Indirect Access Fee, the OPRA fees that currently would apply would be \$100/month (the device-based fee for four servers); if the trading engine is comprised of four servers and the Professional Subscriber is not already paying the OPRA Indirect Access Fee, the OPRA fees that currently would apply would be \$700/month (the device-based fee for four servers plus an Indirect Access Fee for the datafeed of \$600).

Because the Non-Display Application Fee would be on a “per installation” basis, a Professional Subscriber that has multiple trading engines would pay a fee for each of them (up to fifteen, when the Enterprise Fee would be available). The Non-Display Application Fee for a trading engine would include the device-based fees with respect to the servers and other devices that comprise the trading engine, up to the amount of the Non-Display Application Fee. For example, for the trading engine described above comprised of four servers, in 2012 the total fees would be \$500/month, not \$600/month (the sum of \$500 plus four times \$25.00). For a trading engine comprised of 22 servers, the Professional Subscriber would be required to pay device-based fees in excess of the Non-Display Application Fee, and in 2012 the total fees for the trading engine would be \$550/month. If a Professional Subscriber has three Non-Display Applications residing on a single server, each of them would be subject to the Non-Display Application Fee, and in 2012 the total Non-Display Application Fees for the three trading engines would be \$1500/month. If a Professional Subscriber were receiving a data feed from an OPRA Vendor solely for use in one or more trading engines, the Professional Subscriber would not be obligated to pay the Indirect Access Fee in addition to the new fee.

It would also be possible that a Professional Subscriber would connect a Non-Display Application to a “direct”

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11A3-2). See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at <http://www.opradata.com>.

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The ten participants to the OPRA Plan are BATS Exchange, Inc., BOX Options Exchange, LLC, Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, International Securities Exchange, LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, NASDAQ Stock Market LLC, NYSE Amex, LLC n/k/a NYSE MKT LLC, and NYSE Arca, Inc.

data feed from OPRA's processor rather than an "indirect" data feed from an OPRA Vendor. In this case, the Professional Subscriber would be required to pay the Direct Access Fee as well as the Non-Display Application Fee, even if the direct data feed to the trading engine is the only data feed received by the Professional Subscriber.⁸

As noted above, any Professional Subscriber that wants to receive an indirect data feed of OPRA Data must sign an Indirect Access Rider to its Professional Subscriber Agreement, and any Professional Subscriber that wants to receive a direct data feed of OPRA data must sign a Direct Access Rider to its Professional Subscriber Agreement. In either case, the Professional Subscriber must provide OPRA with an "Exhibit A" to the Rider, in which it describes its intended use of the OPRA data, and both Riders require Professional Subscribers to report their use of OPRA data on a monthly basis. These requirements would apply to a Professional Subscriber that wants to have a Non-Display Application receive OPRA data. OPRA's current form of Exhibit A should provide OPRA staff with the information that it needs to generate invoices for the Non-Display Application Fee.

OPRA believes that the use of Non-Display Applications by active trading firms is becoming increasingly common, and that this use has resulted, and will continue to result, in a significant reduction in the number of devices and user IDs that are reported to it.⁹ OPRA believes that its Fee Schedule as revised to include the new Non-Display

Application Fee will more fairly allocate to Non-Display Applications a share of the overall costs of OPRA and its member exchanges to which OPRA's fees may properly be applied.

The text of the proposed amendment to the OPRA Plan is available at OPRA, the Commission's Public Reference Room, <http://opradata.com>, and on the Commission's Web site at www.sec.gov.

II. Implementation of the OPRA Plan Amendment

OPRA designated this amendment as qualified to be put into effect upon filing with the Commission in accordance with clause (i) of paragraph (b)(3) of Rule 608 under the Act.¹⁰ OPRA intends to implement the amendment on October 1, 2012.

The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 608(b)(2) under the Act¹¹ if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. SR-OPRA-2012-04 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-OPRA-2012-04. 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 plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment 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 1 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OPRA. 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-OPRA-2012-04 and should be submitted on or before September 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012-20263 Filed 8-16-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30166; 812-13956]

IndexIQ Advisors LLC and IndexIQ Active ETF Trust; Notice of Application

August 13, 2012.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(j) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

⁸ OPRA believes that it is fair and appropriate to charge a Direct Access Fee for a "direct" data feed connection to a Non-Display Application, but not to charge an Indirect Access Fee for an "indirect" data feed connection to a Non-Display Application, because of the differences in the Indirect Access Fee and the Direct Access Fee: The Indirect Access Fee is \$600/month per Professional Subscriber, regardless of the number of indirect data feed connections that a particular Subscriber has, whereas the Direct Access Fee is \$1,000/month for the first circuit connection, with no charge for one back-up circuit connection and a charge of \$100 per connection for any additional connections. These differences, in turn, reflect that OPRA does not directly provide additional service when a Professional Subscriber adds additional indirect connections (because an OPRA Vendor is providing the additional connections), but that OPRA does provide additional service when a Professional Subscriber adds additional direct connections.

⁹ In 2004, an average of 223,000 devices and User IDs were reported to OPRA in each month of the year. In 2011, an average of 164,000 devices and User IDs were reported to OPRA in each month of the year, a reduction over that eight year period of approximately 26%. OPRA does not have a basis for estimating the portion of that reduction that might be due to the use of Non-Display Applications, but does believe that the use of Non-Display Applications contributed to the reduction.

¹⁰ 17 CFR 242.608(b)(3)(i).

¹¹ 17 CFR 242.608(b)(2).

¹² 17 CFR 200.30-3(a)(29).

APPLICANTS: IndexIQ Advisors LLC ("IndexIQ") and IndexIQ Active ETF Trust (the "Trust").

SUMMARY OF APPLICATION: Applicants request an order that permits: (a) Actively-managed series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

FILING DATES: The application was filed on September 9, 2011, and amended on March 27, 2012, July 6, 2012, and July 16, 2012. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 7, 2012, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants, 800 Westchester Drive, Suite N-611, Rye Brook, NY 10573.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551-6811 or Daniele Marchesani, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the

application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. The Trust will be registered as an open-end management investment company under the Act and is a statutory trust organized under the laws of Delaware. The Trust will initially offer three actively-managed investment series, IQ Global Equity Active ETF ("Global Equity ETF"), IQ Global Fixed Income Active ETF ("Global Fixed Income ETF") and IQ Long-Short Active ETF ("Long-Short ETF") (together, the "Initial Funds"). The investment objective of the Global Equity ETF will be to seek long-term capital appreciation by investing primarily in U.S. and international equity securities. The investment objective of the Global Fixed Income ETF will be to seek as high a level of current income as is consistent with preservation of capital. The investment objective of the Long-Short ETF will be to seek long-term capital appreciation by investing primarily in U.S. and international equity securities.

2. IndexIQ, a Delaware limited liability company, will serve as investment adviser to the Initial Funds. An Adviser (as defined below) may in the future retain one or more sub-advisers ("Fund Sub-Advisers") to manage the portfolio of the Funds (as defined below). Any other Adviser and any Fund Sub-Adviser will be registered or exempt from registration under the Investment Advisers Act of 1940 ("Advisers Act"). A registered broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act"), which may be an affiliate of the Adviser, will act as the distributor and principal underwriter of the Funds ("Distributor").

3. Applicants request that the order apply to the Initial Funds and any future series of the Trust or of any other open-end management companies that may use active management investment strategies ("Future Funds"). Any Future Fund will (a) be advised by IndexIQ or an entity controlling, controlled by, or under common control with IndexIQ (together with IndexIQ, an "Adviser"), and (b) comply with the terms and conditions of the application.¹ The

¹ All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Investing Fund (as defined below) may rely on the

Initial Funds and Future Funds together are the "Funds". Each Fund will consist of a portfolio of securities (including fixed income securities and/or equity securities) and/or currencies and other assets ("Portfolio Instruments").² Funds may invest in "Depository Receipts". A Fund will not invest in any Depository Receipts that the Adviser deems to be illiquid or for which pricing information is not readily available.³ Each Fund will operate as an actively managed exchange-traded fund ("ETF"). The Funds may invest in other open-end and/or closed-end investment companies and/or ETFs.

4. Applicants also request that any exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) apply to: (i) Any Fund that is currently or subsequently part of the same "group of investment companies" as an Initial Fund within the meaning of section 12(d)(1)(G)(ii) of the Act; (ii) any principal underwriter for the Fund; (iii) any brokers selling Shares of a Fund to an Investing Fund (as defined below); and (iv) each management investment company or unit investment trust registered under the Act that is not part of the same "group of investment companies" as the Funds within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies, "Investing Management Companies," such unit investment trusts, "Investing Trusts," and Investing Management Companies and Investing Trusts together, "Investing Funds"). Investing Funds do not include the Funds.

5. Applicants anticipate that a Creation Unit will consist of at least 50,000 Shares and that the price of a Share will range from \$15 to \$100. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into a participant agreement with the Distributor and the Trust ("Authorized Participant") with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (a) a broker or dealer registered under the Exchange Act ("Broker") or other participant in the Continuous Net

order only to invest in Funds and not in any other registered investment company.

² Neither the Initial Funds nor any Future Fund will invest in options contracts, futures contracts, or swap agreements.

³ Depository Receipts are typically issued by a financial institution, a "depository", and evidence ownership in a security or pool of securities that have been deposited with the depository. No affiliated persons of a Fund, Adviser or any Fund Sub-Adviser will serve as the depository bank for any Depository Receipts held by a Fund.

Settlement System of the National Securities Clearing Corporation, a clearing agency registered with the Commission and affiliated with the Depository Trust Company ("DTC"), or (b) a participant in the DTC (such participant, "DTC Participant"). The Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments ("Redemption Instruments").⁴ On any given Business Day⁵ the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or redemption, as the "Creation Basket." In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),⁶ except (a) in the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;⁷ or (c) TBA Transactions,⁸ short positions and other positions that cannot be transferred in kind⁹ will be excluded from the

Creation Basket.¹⁰ If there is a difference between the net asset value ("NAV") attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the "Cash Amount").

6. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving, a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because (i) such instruments are not eligible for transfer through either the NSCC Process or DTC Process; or (ii) in the case of Funds holding securities traded on global markets ("Foreign Funds"), such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.¹¹

7. Each Business Day, before the open of trading on a national securities exchange as defined in section 2(a)(26) of the Act ("Stock Exchange"), on which Shares are listed, each Fund will cause

to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. A Stock Exchange will disseminate every 15 seconds throughout the trading day an amount representing, on a per Share basis, the sum of the current value of the Deposit Instruments and the estimated Cash Amount.

8. An investor purchasing or redeeming a Creation Unit from a Fund may be charged a fee ("Transaction Fee") to protect existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.¹² All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant, and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus ("Prospectus") to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

9. Shares will be listed and traded at negotiated prices on a Stock Exchange and traded in the secondary market. Applicants expect that market makers ("Market Makers") will be assigned to Shares. The price of Shares trading on the Stock Exchange will be based on a current bid/offer in the secondary market. Transactions involving the purchases and sales of Shares on the Stock Exchange will be subject to customary brokerage commissions and charges.

10. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities.¹³

¹² Where a Fund permits an in-kind purchaser to substitute cash in lieu of depositing one or more Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of buying those particular Deposit Instruments.

¹³ There will be at least one Market Maker on the Stock Exchange for a Fund's Shares (e.g., NYSE Arca would designate a Lead Market Maker) to maintain a market for such Fund's Shares. No Market Maker will be an affiliated person, or an affiliated person of an affiliated person, of the

⁴ The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 ("Securities Act"). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

⁵ Each Fund will sell and redeem Creation Units on any day the Fund is open, including as required by section 22(e) of the Act (each, a "Business Day").

⁶ The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for that Business Day.

⁷ A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

⁸ A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

⁹ This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

¹⁰ Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Cash Amount (as defined below).

¹¹ A "custom order" is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.¹⁴ Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV per Share should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

11. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant. As discussed above, redemptions of Creation Units will generally be made on an in-kind basis, subject to certain specified exceptions under which redemptions may be made in whole or in part on a cash basis, and will be subject to a Transaction Fee.

12. Neither the Trust nor any Fund will be marketed or otherwise held out as a "mutual fund." Instead, each Fund will be marketed as an "actively-managed exchange-traded fund." In any advertising material where features of obtaining, buying or selling Shares traded on the Stock Exchange are described there will be an appropriate statement to the effect that Shares are not individually redeemable.

13. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include the Prospectus and additional quantitative information updated on a daily basis, including on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of the calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments, held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.¹⁵

Funds, except within section 2(a)(3)(A) or (C) of the Act due to ownership of Shares, as described below.

¹⁴ Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

¹⁵ Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day will be booked and reflected in NAV on the current Business Day. Accordingly, the Funds will be able to disclose at the beginning

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(j) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(j) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the

of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c-1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment

among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Units of Foreign Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 15 calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction, up to a maximum of 15 calendar days, in the principal local markets where transactions in the Portfolio Instruments of each Foreign Fund customarily clear and settle, but in all cases no later than 15 calendar days following the tender of a Creation Unit.

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of 15 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each affected Foreign Fund. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations or redemptions in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request relief to permit Investing Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Investing Funds in excess of the limits in section 12(d)(1)(B) of the Act. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

11. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Investing Management Company ("Investing Fund Adviser"), sponsor of an Investing Trust ("Sponsor"), any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Adviser, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor ("Investing Fund's Advisory Group") from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Investing Management Company ("Sub-Adviser"), any person controlling, controlled by or under

common control with the Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Sub-Adviser or any person controlling, controlled by or under common control with the Sub-Adviser ("Investing Fund's Sub-Advisory Group").

12. Applicants propose a condition to ensure that no Investing Fund or Investing Fund Affiliate¹⁶ (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting"). An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Adviser, Sub-Adviser, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Adviser, Sub-Adviser, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

13. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees ("Board") of any Investing Management Company, including a majority of the directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("disinterested directors or trustees"), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to

¹⁶ An "Investing Fund Affiliate" is any Investing Fund Adviser, Sub-Adviser, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. "Fund Affiliate" is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

a fund of funds as set forth in NASD Conduct Rule 2830.¹⁷

14. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

15. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Investing Funds must enter into an agreement with the respective Funds ("FOF Participation Agreement"). The FOF Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in a Fund and not in any other investment company.

Sections 17(a)(1) and (2) of the Act

16. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person ("second tier affiliate"), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Each Fund may be deemed to be controlled by an Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser (an "Affiliated Fund").

17. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by

persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds.¹⁸ Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, certain Investing Funds of which the Funds are an affiliated person or a second tier affiliate.¹⁹

18. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Absent the unusual circumstances discussed in the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively, and will correspond pro rata to the Fund's Portfolio Instruments. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the relevant Funds. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

19. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares

¹⁸ Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because an investment adviser to the Funds is also an investment adviser to an Investing Fund.

¹⁹ Applicants anticipate that most Investing Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund. To the extent purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Investing Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is intended to also cover the in-kind transactions that would accompany such sales and redemptions.

directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.²⁰ Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. As long as a Fund operates in reliance on the requested order, the Shares of the Funds will be listed on a Stock Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may purchase those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for each Fund, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund: the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the listing Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Adviser or Fund Sub-Adviser, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the

²⁰ Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of the Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

¹⁷ Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

Act that provides relief permitting the operation of actively-managed exchange-traded funds.

B. 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Sub-Advisory Group with respect to a Fund for which the Sub-Adviser or a person controlling, controlled by or under common control with the Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to assure that the Investing Fund Adviser and any Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the Shares exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of a Fund, including a majority of the disinterested Board members, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection

with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Adviser, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received from a Fund by the Investing Fund Adviser, or Trustee or Sponsor, or an affiliated person of the Investing Fund Adviser, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, or Trustee or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Sub-Adviser will waive fees otherwise payable to the Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Sub-Adviser, or an affiliated person of the Sub-Adviser, other than any advisory fees paid to the Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Sub-Adviser. In the event that the Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of the Fund, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities

purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated

information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on this section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting a Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,
Assistant Secretary.

[FR Doc. 2012-20264 Filed 8-16-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Wednesday, August 22, 2012 at 2:00 p.m. and Thursday, August 23, 2012 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5

U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meetings in closed sessions.

The subject matter of the Closed Meeting scheduled for Wednesday, August 22, 2012 will be a litigation matter.

The subject matter of the Closed Meeting scheduled for Thursday, August 23, 2012 will be:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: August 15, 2012.

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2012-20400 Filed 8-15-12; 4:15 pm]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67644; File No. SR-CBOE-2012-077]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay the Implementation Date of Changes to Market-Makers' Continuous Quoting Obligations

August 13, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 3, 2012, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delay the implementation date of changes to Market-Makers' continuous quoting obligations.

The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission.

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 recently submitted a proposed rule change to amend Rule 1.1(ccc), "Continuous Electronic Quotes," to reduce to 90% the percentage of time for which a Market-Maker is required to provide electronic quotes in an appointed option class on a given trading day.³ That filing also included a proposed rule change to amend Rules 8.13, 8.15A, 8.85, and 8.93 to increase to the lesser of 99% or 100% minus one call-put pair the percentage of series in each class in which Preferred Market-Makers, Lead Market-Makers, Designated Primary Market-Makers, and Electronic Designated Primary Market-Makers, respectively (collectively, "Market-Makers"), must provide continuous electronic quotes.

The Exchange is proposing to delay implementation of these changes to allow Market-Makers more time to make necessary system changes to comply with these new quoting obligations. The Exchange will announce the

³ Securities Exchange Act Release No. 34-67410 (July 11, 2012), 77 FR 42040 (July 17, 2012) (SR-CBOE-2012-064).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

implementation date of the proposed rule change in a Regulatory Circular to be published no later than 90 days following the effective date. The implementation date will be no later than 150 days following the effective date.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁵ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes that delaying the implementation date of these changes to Market-Makers' continuous quoting obligations to allow Market-Makers to adjust their systems to be consistent with these new obligations will provide efficiencies that will benefit investors and the public interest and encourage more efficient order entry practices by Market-Makers.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁶ and Rule 19b-4(f)(6) thereunder.⁷ 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 prior to 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 Act⁸ and Rule 19b-4(f)(6)(iii) thereunder.⁹

A proposed rule change filed under Rule 19b-4(f)(6)¹⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹¹ 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 proposed rule change may become operative immediately upon filing. The Exchange has indicated that delaying the implementation date of the changes to Market-Makers' continuous quoting obligations will allow additional time for Market-Makers to adjust their systems to be consistent with the amended quoting obligations, which should encourage more efficient order entry practices to the benefit of investors and the public interest. Waiving the 30-day operative delay should help to avoid any confusion that could result if the amendments to the continuous quoting obligations became operative, and then this proposed rule change to delay implementation became operative at a later time. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.¹²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2012-077 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2012-077. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6)(iii). The Exchange has requested that the Commission waive the requirement that the Exchange provide the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change pursuant to Rule 19b-4(f)(6)(iii). The Commission hereby grants this request.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² 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).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷ 17 CFR 240.19b-4(f)(6).

2012-077 and should be submitted on or before September 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012-20261 Filed 8-16-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67574; File No. SR-CBOE-2012-069]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Extension of the CBSX Individual Stock Trading Pause Pilot Program

August 2, 2012.

Correction

In notice document 2012-19356 appearing on pages 47450-47452 in the issue of Wednesday, August 7, 2012, make the following correction:

On page 47450, in the second column, the File No. is corrected to read as set forth above.

[FR Doc. C1-2012-19356 Filed 8-16-12; 8:45 am]

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67647; File No. SR-NSX-2012-12]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Text of NSX Rule 11.15 To Clarify the Manner in Which Certain Orders are Routed by the Exchange to Other Market Centers

August 14, 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 August 9, 2012, National Stock Exchange, Inc. ("NSX" 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 Substance of the Proposed Rule Change

National Stock Exchange, Inc. ("NSX" or "Exchange") is proposing to modify the text of NSX Rule 11.15 to clarify the manner in which certain orders are routed by the Exchange to other market centers.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nsx.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently uses routing logic to direct certain incoming orders to other trading centers for execution in accordance with Rule 11.15(a)(ii) ("Routing to Away Trading Centers" for "Orders Other Than Sweep Orders"). The Exchange is proposing to amend Rule 11.15(a)(ii) in order to provide that (i) the Exchange may route incoming orders to alternative trading systems, (ii) routed orders may not receive an execution and (iii) limit orders routed pursuant to Rule 11.15(a)(ii) will be routed with a time in force of immediate or cancel ("IOC").

NSX Rule 11.15(a)(ii) currently provides in clause (B) that, unless the terms of an order direct otherwise, the Exchange will route incoming orders (other than Sweep Orders³) to "the applicable trading center for execution against the applicable protected quotation at the Protected NBBO." A Protected NBBO is defined under NSX Rule 1.5(P)(2) as "the national best bid or offer that is a protected quotation."

The Exchange proposes to amend the language in Rule 11.15(a)(ii)(A) and (B) to explicitly provide that incoming orders may be routed to any "Trading Center" which is defined by the Exchange under NSX Rule 2.11(a) to include alternative trading systems.⁴

The Exchange further proposes to clarify that the Exchange's Routing Logic determines the venue or venues to which an order may be routed. "Routing Logic" will be defined under Rule 1.5(R)(2) as "the methodology used to determine the Trading Center to which an incoming order will be directed for potential execution." The Exchange is also proposing to add subsection (C) to NSX Rule 11.15(a)(ii) which will clarify that the Exchange may alter the Routing Logic without notice.⁵

The Exchange also proposes to amend 11.15(a)(ii)(A) and (B) by modifying the phrase "for execution" to "for potential execution" in order to clarify the fact that a routed order may not necessarily receive an execution at the away Trading Center.

Finally, the references to converted and routed "limit orders" in Rule 11.15(a)(ii)(A) and (B) are proposed to be modified as "limit IOC Orders" in order to clarify that such orders are routed with a time in force of immediate-or-cancel.

The proposed amendments benefit Equity Trading Permit ("ETP") Holders by providing them with additional information regarding the Exchange's order routing process.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,⁶ and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes the modification of Rule 11.15 furthers the objective of Section 6(b)(5) of the Act because it clearly explains the potential venues to which the Exchange may route orders. The proposed amendments clarify how the Exchange routes incoming orders other than Sweep Orders. Accordingly, the Exchange believes that the proposed rule change promotes just and equitable

⁴ See NSX Rule 2.11(a) which defines a "Trading Center" as "other securities exchanges, facilities of securities exchanges, automated trading systems, electronic communications networks or other brokers or dealers."

⁵ The Exchange currently offers a single routing option through its subsidiary broker-dealer, NSX Securities LLC ("NSXS"), which entity may engage one or more third-party routing broker-dealers to route orders, at the direction of the Exchange, to away Trading Centers.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Sweep Order is defined in NSX Rule 11.11(c)(7).

principles of trade, will remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest.

The proposed rule change provides transparency and certainty with respect to how orders are routed by the Exchange. In so doing, the proposed rule change promotes the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest, consistent with the Act and the rules promulgated thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ 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 prior to 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 and Rule 19b-4(f)(6)(iii) thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant

to Rule 19b4(f)(6)(iii),¹² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to route certain orders to additional Trading Centers that may execute such orders faster and at the best price available. In addition, the proposed rule change will provide clarity regarding the manner in which the Exchange routes certain orders and should eliminate potential confusion in NSX Rules. Therefore, the Commission designates the proposal as operative upon filing with the Commission.¹³

At any time within sixty (60) days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NSX-2012-12 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-NSX-2012-12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSX-2012-12 and should be submitted on or before September 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012-20262 Filed 8-16-12; 8:45 am]

BILLING CODE 8011-01-P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2012-0021]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/ Office of Child Support Enforcement (OCSE))—Match Number 1306

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer-matching program that will expire on September 30, 2012.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer-matching program that we are currently conducting with OCSE.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ 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).

¹⁴ 17 CFR 200.30-3(a)(12).

Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966-0869, or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100-503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed, and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

- (1) Negotiate written agreements with the other agency or agencies participating in the matching programs;
- (2) Obtain the approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;
- (3) Publish notice of the computer-matching program in the **Federal Register**;
- (4) Furnish detailed reports about matching programs to Congress and OMB;
- (5) Notify applicants and beneficiaries that their records are subject to matching; and
- (6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs

comply with the requirements of the Privacy Act, as amended.

Dawn S. Wiggins,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA With the Office of Child Support Enforcement (OCSE)

A. Participating Agencies

SSA and OCSE.

B. Purpose of the Matching Program

The purpose of this matching program is for the Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement (OCSE) to provide us with quarterly wage (QW) and unemployment insurance (UI) information from the National Directory of New Hires (NDNH) to allow us to determine eligibility of applicants for Extra Help (low-income subsidy assistance) under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173). This Agreement also governs the use, treatment, and safeguarding of the information exchanged. OCSE is the "source agency" and we are the "recipient agency," as defined by the Privacy Act. 5 U.S.C. 552a(a)(9) and (11).

This Agreement assists us (1) in determining eligibility of applicants for Extra Help; (2) in re-determining eligibility of existing Extra Help beneficiaries during periodic screening; and (3) in administering the Extra Help program.

C. Authority for Conducting the Matching Program

The legal authority for disclosures under this Agreement are the Social Security Act (Act) and the Privacy Act of 1974, as amended. Section 453(j)(4) of the Act provides that OCSE shall provide the Commissioner of Social Security with all information in the NDNH. 42 U.S.C. 653(j)(4). We have authority to use data to determine entitlement and eligibility for the programs we administer pursuant to sections 453(j)(4), 1631(f), and 1860D-14(a)(3) of the Act. 42 U.S.C. 653(j)(4), 1386(f), and 1395w-114. Disclosures under this Agreement shall be made in accordance with 5 U.S.C. 552a(b)(3), and in compliance with the matching procedures in 5 U.S.C. 552a(o), (p), and (r).

Section 1860D-14(a)(3)(B) of the Act provides that "[t]he determination of whether a part D eligible individual residing in a State is a subsidy eligible individual * * * shall be determined

under the State plan under title XIX for the State under section 1935(a) or by the Commissioner of Social Security." 42 U.S.C. 1395w-114(a)(3)(B).

D. Categories of Records and Persons Covered by the Matching Program

OCSE and us published notice of the relevant Systems of Records (SORs) in the **Federal Register**.

We have independent authority to collect this information via sections 202 through 205, 223, 226, 228, 1611, 1631, 1818, 1836, 1839, 1840, and 1860D-1-1860D-15 of the Act (42 U.S.C. 402 through 405, 423, 426, 428, 1382, 1383, 1395i-2, 1395o, 1395r-1, 1395s, and 1395w-101-1395w-115). We collect and maintain this information in the Medicare Database (MDB) SORs, No. 60-0321, published at 69 FR 77816 (December 28, 2004) and 71 FR 42159-42164 (July 25, 2006). The MDB contains information related to Medicare Part A, Part B, Medicare Advantage Part C, and Medicare Part D.

OCSE will match our information in the MDB against the NDNH. The NDNH contains new hire, QW, and UI information furnished by state and Federal agencies and is maintained by OCSE in its system of records "OCSE National Directory of New Hires" (NDNH), No. 09-80-0381, established by publication at 76 FR 560 (January 5, 2011). Routine use #9 of the SOR authorizes disclosure of NDNH information to SSA.

We will provide OCSE the following data elements electronically in the finder file:

- Client's Own Social Security Number (COSSN), (SSN) and
- Name.

OCSE will provide us with the following data elements electronically from the NDNH:

- a. Quarterly Wage File:
 - QW record identifier,
 - For employees:
 - (1) Name (first, middle, last),
 - (2) Address(es),
 - (3) Wage amount, and
 - (4) Reporting period.
 - For employers of individuals in the QW file of the NDNH:
 - (1) Name,
 - (2) Federal (or State, if no Federal) Employer Identification Number (EIN),
 - (3) Employer Federal Information Processing Standards (FIPS) code (if present), and
 - (4) Address(es).
- b. Unemployment Insurance File:
 - UI record identifier,
 - Name (first, middle, last),
 - Address,
 - UI benefit amount, and
 - Reporting period.

Data Elements we update in the OCSE Financial Items (OCSEFITM) table, if there is a match:

- QW record identifier,
- For employees:
 - (1) Employee's SSN,
 - (2) Employee's wage amount, and
 - (3) Reporting period.
- For employers of individuals:
 - (1) Federal (or State, if no Federal) EIN,
 - (2) UI record identifier,
 - (3) Claimant SSN,
 - (4) UI benefit amount,
 - (5) Reporting period, and
 - (6) Employer's name.

E. Inclusive Dates of the Matching Program

The effective date of this matching program is October 1, 2012; provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2012-20204 Filed 8-16-12; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF STATE

[Public Notice 7983]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Notice of Public Meeting of the Study Group on International Arbitration and Conciliation

The Office of the Assistant Legal Adviser for Private International Law, Department of State, hereby gives notice of a public meeting of the Study Group on International Arbitration and Conciliation. A Working Group of the United Nations Commission on International Trade Law (UNCITRAL) is currently developing an instrument on transparency in treaty-based investor-State arbitration. The Working Group, which has held four previous sessions on this topic, will convene October 1-5, 2012 in Vienna, Austria, to continue a second reading of draft rules on transparency. It is expected that the discussion will cover both the content of the proposed transparency standards as well as the scope of the application of new transparency rules. Relevant documents may be accessed at the UNCITRAL Web site by clicking on the link for Working Group II (<http://www.uncitral.org/uncitral/en/>

commission/working_groups/2Arbitration.html). The purpose of the public meeting is to obtain the views of concerned stakeholders on these topics in advance of the Working Group session. This is not a meeting of the full Advisory Committee.

Time and Place: The meeting will take place on Wednesday, September 19, 2012 from 10:00 a.m. to 1:00 p.m. in Room 240, South Building, State Department Annex 4. Participants should arrive at the Navy Hill gate at the corner of 23rd Street NW and D Street NW before 9:45 a.m. for visitor screening. Persons arriving later will need to make arrangements for entry using the contact information provided below. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: This meeting is open to the public, subject to the capacity of the meeting room. Access to Navy Hill is strictly controlled. For pre-clearance purposes, those planning to attend in person are requested to email or phone Tricia Smeltzer (smeltzertk@state.gov, 202-776-8423) or Niesha Toms (tomsnn@state.gov, 202-776-8420) and provide your full name, address, date of birth, citizenship, driver's license or passport number, affiliation, and email address. This will greatly facilitate entry. Participants will be met at the Navy Hill gate at 23rd and D Streets NW., and will be escorted to the South Building.

A member of the public needing reasonable accommodation should advise Ms. Smeltzer or Ms. Toms not later than September 12. Requests made after that date will be considered, but might not be able to be fulfilled. If you would like to participate by telephone, please contact Ms. Smeltzer or Ms. Toms to obtain the call-in number and other information.

Personal data are requested pursuant to Public Law 99-399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107-56 (USA Patriot Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS-D) database. Please see the Security Records System of Records Notice (State-36) at <http://www.state.gov/documents/organization/103419.pdf> for additional information.

Dated: August 8, 2012.

Keith Loken,

Assistant Legal Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. 2012-20244 Filed 8-16-12; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Nineteenth Meeting: RTCA Special Committee 216, Aeronautical Systems Security (Joint Meeting With EUROCAE WG-72)

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

ACTION: Meeting Notice of RTCA Special Committee 216, Aeronautical Systems Security (Joint Meeting with EUROCAE WG-72).

SUMMARY: The FAA is issuing this notice to advise the public of the nineteenth meeting of RTCA Special Committee 216, Aeronautical Systems Security (Joint Meeting with EUROCAE WG-72).

DATES: The meeting will be held September 11-14, 2012, from 9 a.m.-5 p.m.

ADDRESSES: The meeting will be held at EASA, Ottoplatz 1, 50679 Köln, Germany. Contact Cyrille Rosay for information at 49-221-899-90-4045 or fax: 49-221-899-90-4545, or email: cyrille.rosay@ease.europa.eu.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833-9339, fax at (202) 833-9434, or Web site at <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 216. The agenda will include the following:

Tuesday, September 11, 2012

Plenary

09:00-11:30

- Welcome
- Introduction, Logistics
- Eurocae Context Presentation
- Joint Plenary:
 - Scope and purpose of this meeting with focus on ED-202A/DO-326A and ED-204
 - Open Consultation/Frac requirements & expectations
 - Coordination between drafting

groups

ED-201

11h30 to 17h00: Continuation of ED-201 work.

ED-202A/ED-203

11h30 to 17h00: Addressing resolution of Blocking Points. Interaction with ED-201/ED-204 drafting groups, where necessary:

- Segregation of & Interaction Between Security & Safety Processes
- Integration of AWSP with PRA principles
- Definition, Terminology and Use of SL/SAL/SEL/* * *
- Definition of "Security Environment" and how to treat its evolutionary nature and resulting consequences
- Scope of the Documents: Type Certificate, STC and Change to Type Design
- Consistency of (Table of) Contents between ED-202 & ED-203

ED-204

11h30 to 17h00: Continuation of ED-204 work. Interaction with ED-202 drafting group, where necessary.

September 12th & 13th

ED-202A/ED-203

09h00 to 17h00: Addressing resolution of Blocking Points. Interaction with ED-201/ED-204 drafting groups, where necessary.

ED-204

09h00 to 17h00: Continuation of ED-204 work. Interaction with ED-202 drafting group.

September 14th

Plenary

09h00 to 15h00: Joint Plenary:

- Achievements of this meeting with focus on ED-202A/DO-326A and ED-204
- Open items & Planning of activities
- Publication Schedule/Options for Open Consultation/FRAC
- Position of Regulatory Authorities: Go Ahead?

15:00 Wrap-Up, Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 10, 2012.

David Sicard,

*Manager, Business Operations Branch,
Federal Aviation Administration.*

[FR Doc. 2012-20257 Filed 8-16-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In July 2012, there were eight applications approved. Additionally, 16 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: San Diego County Regional Airport Authority, San Diego, California.

Application Number: 12-10-C-00-SAN.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$31,299,883.

Earliest Charge Effective Date: October 1, 2036.

Estimated Charge Expiration Date: November 1, 2037.

Class of Air Carriers Not Required to Collect PFC'S: Nonscheduled/on demand air carriers filing FAA Form 1800-31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at San Diego International Airport.

Brief Description of Projects Approved for Collection and Use at a \$4.50 PFC Level:

Rehabilitate taxiway C.
Quieter home program—phase IV.

Brief Description of Project Approved for Collection and Use at a \$3.00 PFC Level:

Airport master plan update.

Brief Description of Project Approved for Collection at a \$4.50 PFC Level:

Relocate runway 09 displaced threshold.

Decision Date: July 3, 2012.

FOR FURTHER INFORMATION CONTACT:

Darlene Williams, Los Angeles Airports District Office, (310) 725-3625.

Public Agency: County of Gregg, Longview, Texas.

Application Number: 12-03-C-00-GGG.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$1,178,540.

Earliest Charge Effective Date: February 1, 2013.

Estimated Charge Expiration Date: September 1, 2023.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Security fencing.

Planning studies.

Aircraft rescue and firefighting truck.

Acquire equipment.

Rehabilitate taxiways (taxiways B, C, D, G, L, and M).

Rehabilitate runway 18/36.

Rehabilitate runway 13/31.

Runway 13/31 safety area improvements.

Acquire snow removal equipment.

PFC application and administration fees.

Decision Date: July 10, 2012.

FOR FURTHER INFORMATION CONTACT:

Guillermo Villalobos, Texas Airports Development Office, (817) 222-5657.

Public Agency: City of Dayton, Ohio.

Application Number: 12-07-C-00-DAY.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$7,439,375.

Earliest Charge Effective Date: November 1, 2017.

Estimated Charge Expiration Date: April 1, 2019.

Class of Air Carriers Not Required to Collect PFC'S: Air taxi/commercial operators filing FAA Form 1800-31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Dayton International Airport.

Brief Description of Project Approved for Collection and Use at a \$4.50 PFC Level:

Airport terminal renovations.

Brief Description of Project Approved for Collection and Use at a \$3.00 PFC Level:

Terminal planning study.

Decision Date: July 11, 2012.

FOR FURTHER INFORMATION CONTACT:

Mary Jagiello, Detroit Airports District Office, (734) 229-2956.

Public Agency: City of Modesto, California.

Application Number: 12-09-C-00-MOD.

Application Type: Impose and use a PFC.

PEG Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$273,845.

Earliest Charge Effective Date: December 1, 2012.

Estimated Charge Expiration Date: December 1, 2015.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects

Approved for Collection and Use:

Apron rehabilitation—general aviation. Enhance runway 10R/28L safety area.

Decision Date: July 12, 2012.

FOR FURTHER INFORMATION CONTACT: Neil Kumar, San Francisco Airports District Office, (650) 827-7627.

Public Agency: Bert Mooney Airport Authority, Butte, Montana.

Application Number: 12-10-C-00-BTM.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$397,526.

Earliest Charge Effective Date: February 1, 2013.

Estimated Charge Expiration Date: March 1, 2017.

Class of Air Carriers not Required to Collect PEG'S:

Air taxi/commercial operators filing FAA Form 1800-31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Bert Mooney Airport.

Brief Description of Projects

Approved for Collection and Use:

Runway 11/29 pavement rehabilitation.

Taxiway B pavement rehabilitation.

Runway 15/33 pavement rehabilitation.

Aircraft rescue and firefighting equipment acquisition.

Security enhancements.

Rehabilitate concrete commercial apron. General aviation apron pavement rehabilitation.

Decision Date: July 12, 2012.

FOR FURTHER INFORMATION CONTACT:

Jason Garwood, Helena Airports District Office, (406) 449-5078.

Public Agency: City of Waco, Texas.

Application Number: 12-05-C-00-ACT.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$788,280.

Earliest Charge Effective Date: December 1, 2012.

Estimated Charge Expiration Date: January 1, 2016.

Class of Air Carriers not Required to Collect PFC'S: Air taxi/commercial operators filing FAA Form 1800-31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Waco Regional Airport.

Brief Description of Project Approved for Collection and Use:

Passenger loading bridges.

Taxiway rehabilitation, phase 1.

Apron rehabilitation, phase 1.

PFC preparation.

Taxiway rehabilitation, phase 2.

Apron rehabilitation, phase 2.

Decision Date: July 12, 2012.

FOR FURTHER INFORMATION CONTACT:

Guillermo Villalobos, Texas Airports Development Office, (817) 222-5657.

Public Agency: City of Roswell, New Mexico.

Application Number: 12-05-C-00-ROW.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$486,683.

Earliest Charge Effective Date: February 1, 2019.

Estimated Charge Expiration Date: April 1, 2022.

Class of Air Carriers not Required to Collect PFC'S: None.

Brief Description of Projects

Approved for Collection and Use:

Terminal renovation.

Acquisition snow removal equipment—front end loader.

Wildlife hazard assessment.

Rehabilitate taxiway G, design and construction.

Rehabilitate taxiway C, design and construction.

Acquire aircraft rescue and firefighting truck.

Design and construct runway 17/35 rehabilitation.

PFC administration costs.

Decision Date: July 13, 2012.

FOR FURTHER INFORMATION CONTACT:

Mike Saupp, Louisiana/New Mexico Airports Development Office, (817) 222-5645.

Public Agency: City of Greenville, Mississippi.

Application Number: 12-06-C-00-GLH.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$114,263.

Earliest Charge Effective Date: September 1, 2012.

Estimated Charge Expiration Date: October 1, 2015.

Class of Air Carriers not Required to Collect PFC'S: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Mid-Delta Regional Airport.

Brief Description of Projects

Approved for Collection and Use:

PFC update.

Airfield ramp repair.

Master plan update.

Road relocation and fencing, apron slab replacement.

Wildlife hazard assessment.

Brief Description of Projects

Approved for Collection:

Terminal security lighting.

Airport drainage improvements.

Runway 18L approach lighting.

Runway 18L136R drainage improvements, phase 1.

Brief Description of Disapproved Project: Fire suppression system renovation.

Determination: Disapproved. The project does not meet the requirements of § 158.15(b).

Decision Date: July 23, 2012.

FOR FURTHER INFORMATION CONTACT:

Jonathan Linguist, Jackson Airports District Office, (601) 664-9893.

AMENDMENTS TO PFC APPROVALS

Amendment No., City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
10-08-C-01-SAV, Savannah, GA	05/03/12	\$4,066,265	\$6,669,248	04/01/16	12/01/16
*02-02-C-01-GGG, Longview, TX	07/10/12	699,232	699,232	12/01/12	01/01/13
08-04-C-01-CHA, Chattanooga, TN	07/11/12	2,413,001	2,520,376	10/01/12	10/01/12
12-04-C-01-SBY, Salisbury, MD	07/12/12	937,983	937,983	02/01/17	02/01/17
09-04-C-01-ACT, Waco, TX	07/12/12	790,163	754,153	09/01/12	12/01/12
11-09-C-01-GEG, Spokane, WA	07/13/12	10,215,000	16,365,000	09/01/14	11/01/15
09-09-C-01-EAT, Wenatchee, WA	07/13/12	105,268	104,916	04/01/10	04/01/10
95-02-C-08-STL, Saint Louis, MO	07/16/12	67,032,109	73,311,090	07/01/97	07/01/97
97-03-U-05-STL, Saint Louis, MO	07/16/12	NA	NA	07/01/97	07/01/97
08-09-C-01-STL, Saint Louis, MO	07/16/12	783,625,492	755,733,688	02/01/22	02/01/22
*09-02-C-01-FLG, Flagstaff, AZ	07/17/12	1,157,023	1,208,991	02/01/15	04/01/15
92-01-C-02-SMF, Sacramento, CA	07/19/12	27,651,750	20,010,436	01/01/96	01/01/96
95-02-C-02-SMF, Sacramento, CA	07/19/12	2,677,360	1,390,230	03/01/97	03/01/97
02-07-C-01-SMF, Sacramento, CA	07/19/12	4,208,200	2,041,219	07/01/11	07/01/11
02-05-C-01-RNO, Reno, NV	07/19/12	6,734,192	6,940,843	02/01/03	02/01/03
08-02-C-03-PIE, Clearwater, FL	07/23/12	6,628,510	10,528,075	11/01/12	08/01/14

Notes: The amendments denoted by an asterisk (*) include a change to the PFC level charged from \$3.00 per enplaned passenger to \$4.50 per enplaned passenger. For Longview, TX and Flagstaff, AZ, this change is effective on September 1, 2012.

Issued in Washington, DC, on August 13, 2012.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2012-20169 Filed 8-16-12; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Tier 1 Environmental Impact Statement for the Oregon Portion of the Pacific Northwest Rail Corridor (Portland to Eugene)

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: FRA is issuing this notice to advise the public that FRA and the Oregon Department of Transportation (ODOT) will jointly prepare a Tier 1 Environmental Impact Statement (EIS) in compliance with the National Environmental Policy Act of 1969 (NEPA) to study potential infrastructure investments along the Oregon portion of the Pacific Northwest Rail Corridor (PNWRC). The objective of the Tier 1 EIS is to evaluate a reasonable range of alternatives and select a rail corridor as well as making decisions regarding the level of intercity passenger rail service provided in the corridor, including variations in train frequency, trip time, and on-time performance. Alternatives under consideration will include taking no action (No-Build Alternative), as well as multiple build alternatives between

Eugene-Springfield and the Columbia River in Portland. The build alternatives may include infrastructure improvements to the existing rail corridor, the development of a new rail corridor, or a combination of both. FRA is also issuing this notice to solicit public and agency input in the development of the scope of the EIS and to advise the public that outreach activities conducted by FRA and ODOT will be considered in the preparation of the EIS.

DATES: Written comments on the scope of the Tier 1 EIS for the Oregon Passenger Rail Project should be provided to ODOT by October 31, 2012. Public scoping meetings are scheduled from September 6, 2012 through September 19, 2012 at the times and locations identified in the Addresses section below.

ADDRESSES: Written comments on the scope of this study should be sent to Michael Holthoff, Environmental Project Manager, Major Projects Branch, Oregon Department of Transportation, 3210 Del Webb Avenue NE., Suite 110, Salem, OR 97301, or via email to OregonPassengerRail@odot.state.or.us. Comments may also be provided orally or in writing at the public scoping meetings scheduled at the following locations:

- Salem at ODOT "T" Building, Gail Achterman Conference Room, 355 Capitol Street NE., Salem, OR 97301 on September 6, 2012 from 5 p.m. through 7 p.m.
- Oregon City at Clackamas Community College—Gregory Forum Room A, 19600 Molalla Avenue, Oregon

City, OR 97045 on September 11, 2012 from 5 p.m. through 7 p.m.

- Albany at Albany Public Library, 2450 14th Avenue SE., Albany, OR 97322 on September 12, 2012 from 5 p.m. through 7 p.m.
- Lake Oswego at Phoenix Inn, 14905 SW. Bangy Road, Lake Oswego, OR 97035 on September 13, 2012 from 5 p.m. through 7 p.m.
- Portland at Metro Council Chambers, 600 NE. Grand Avenue, Portland, OR 97232 on September 18, 2012 from 5 p.m. through 7 p.m.
- Eugene at Atrium Building Lobby, 99 W. 10th Avenue, Eugene, Oregon 97401 on September 19, 2012 from 5 p.m. through 7 p.m.

FOR FURTHER INFORMATION CONTACT: Jim Cox, Assistant Manager, Major Projects Branch, Oregon Department of Transportation, 3210 Del Webb Avenue NE., Suite 110, Salem, OR 97301, (telephone: (503) 986-6612); or Ms. Colleen Vaughn, Office of Railroad Policy and Development, Federal Railroad Administration (FRA), 1200 New Jersey Avenue SE., MS-20/W38-221, Washington, DC 20590, (telephone: (202) 493-6096).

SUPPLEMENTARY INFORMATION: The federally designated PNWRC has been the subject of high-speed passenger rail planning and implementation strategies for more than 30 years. The 466-mile corridor serves the most densely populated regions of British Columbia (B.C.), Washington, and Oregon, linking Vancouver, B.C., Seattle, WA, and Portland and Eugene, OR, with growing intermediate communities, including the capital cities of Olympia, WA and Salem, OR. Oregon and Washington have planned, studied, and coordinated

State-sponsored passenger service on the PNWRC since 1994.

Project Background: Oregon initiated a daily passenger rail round trip between Portland and Eugene in 1994. Since that time, Oregon has invested over \$77 million in capital improvements including railroad infrastructure, stations, and rolling stock. A second State-sponsored daily round trip was added in 2000, resulting in ridership growth of 139% between 2000 and 2008.

Current intercity passenger rail service in Oregon includes two Amtrak *Cascades* train roundtrips per day. Additionally, Amtrak sponsors one daily roundtrip of the *Coast Starlight* between Los Angeles and Seattle and one daily roundtrip of the *Empire Builder* between Portland and Chicago. The *Cascades* station stops include Eugene, Albany, Salem, Oregon City and Portland and continue north to Vancouver, BC. The *Coast Starlight* stops in Klamath Falls, Chemult, Eugene, Albany, Salem and Portland. The only stop for the *Empire Builder* in Oregon is in Portland.

Over the next 25 years, the population of the Willamette Valley is expected to grow by approximately 35% with the population anticipated to reach 3.6 million by the year 2035. During the same period, freight volume in the state is expected to grow by approximately 60%. These increases will result in transportation demand that exceeds the available freight and passenger rail capacity in the Willamette Valley. A comprehensive approach to identifying the appropriate rail infrastructure is needed to provide additional passenger and freight rail capacity and to attain the principal service objectives of more reliable passenger trains, more frequent trains, and shortened travel times between Portland and Eugene (a distance of approximately 125 miles).

Environmental Review Process: FRA and ODOT will use a tiered process, as provided for in 40 CFR 1508.28, in the completion of the environmental review of the Project. "Tiering" is a staged environmental review process applied to environmental reviews for complex projects. The Tier 1 EIS will address broad corridor-level issues and alternatives. Subsequent phases or tiers will analyze, at a greater level of detail, narrower site-specific proposals based on the decisions made in Tier 1. The Tier 1 EIS and any subsequent environmental documents will be developed in accordance with Council on Environmental Quality (CEQ) regulations (40 CFR part 1500 *et seq.*) implementing NEPA, and FRA's Procedures for Considering

Environmental Impacts (64 FR 28545; May 26, 1999).

Tier 1: The Tier 1 assessment will result in an EIS with the appropriate level of detail for corridor-level decisions and will address broad overall issues of concern, including but not limited to:

- Confirm the purpose and need for the proposed action.
- Confirm the study area appropriate to assess reasonable alternatives.
- Identify a comprehensive set of goals and objectives for the corridor in conjunction with Project stakeholders. These goals and objectives will be crafted to allow comprehensive evaluation of all aspects of the Project necessary to achieve the goals, including train operations, vehicles, and infrastructure.
- Identify the range of reasonable alternatives to be considered, consistent with the current and planned use of the corridor and the existing services within and adjacent to the study area, as well as considering a no action/no build alternative.
- Develop alternative evaluation criteria to identify alternatives that meet the purpose and need of the proposed action and those that do not.
- Identify the general alignment(s) of the reasonable build alternatives.
- Identify general right-of-way requirements for the reasonable build alternatives.
- Identify, at a corridor planning level, the infrastructure and equipment investment requirements for the reasonable build alternatives.
- Include the consideration of the No-Build Alternative which will be studied as the baseline for comparison with the build alternatives. The No-Build Alternative represents other transportation modes such as auto, air travel, intercity bus, and existing rail and the physical characteristics and capacities as they exist at the time of the Tier 1 EIS, with planned and funded improvements that will be in place at the time the Project becomes operational.
- Evaluate and describe, at a corridor planning level, the potential environmental consequences (benefits and impacts to the built and natural environment) associated with the reasonable alternative alignments and proposed changes in passenger rail train frequency, speed, and on-time performance.
- Establish the timing and sequencing of independent actions to maintain a state of good repair and to implement the proposed action.
- Identify a preferred alternative for corridor route alignment.

• Address subsequent component actions for Tier 2 NEPA documentation as described below.

Tier 2: The second tier assessment(s) will address component projects to be implemented within the general corridor identified in the Tier 1 EIS, and will incorporate by reference the data and evaluations included in the Tier 1 EIS. Subsequent evaluations will concentrate on the issues specific to the component of the selected alternative identified in the Tier 1 EIS, identify the Project alternatives that meet the purpose and need for each component project, and analyze the specific environmental consequences and measures necessary to mitigate environmental impacts at a site-specific level of detail.

Scoping and Public Involvement: FRA encourages broad participation in the EIS process during scoping and subsequent review of the resulting environmental documents. Comments and suggestions are invited from all interested agencies and the public at large to ensure the full range of issues related to the proposed action and all reasonable alternatives are addressed and all significant issues are identified. In particular, FRA is interested in determining whether there are areas of environmental concern where there might be the potential for significant impacts identifiable at a corridor level. Letters describing the proposed Project and soliciting comments were sent to appropriate Federal, State, and local agencies, and appropriate railroads. Public agencies with jurisdiction are requested to advise the FRA and ODOT of the applicable permit and environmental review requirements of each agency, and the scope and content of the environmental information that is germane to the agency's statutory responsibilities in connection with the proposed improvements.

An iterative public involvement/information program will support the process. The program will involve advisory group meetings, newsletters, a Project Web site, public open houses, stakeholder group meetings, and other methods to solicit and incorporate public input throughout the Tier 1 EIS process. To ensure that the full range of issues relating to the proposed action is addressed, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to ODOT or to the FRA at the addresses provided above. Additional information can be obtained by visiting the Project Web site at www.oregonpassengerrail.org or sending an email to OregonPassengerRail@odot.state.or.us.

The buildings used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in the meetings should contact Jyll Smith at Oregon Department of Transportation, telephone (503) 986-3985, five days prior to the meeting.

Issued in Washington, DC on August 13, 2012.

Corey Hill,

Director, Rail Project Development and Delivery.

[FR Doc. 2012-20227 Filed 8-16-12; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement for the Salinas to San Luis Obispo Portion of the Coast Corridor: Monterey and San Luis Obispo Counties, CA

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: FRA is issuing this notice to advise the public that FRA and the California Department of Transportation (Caltrans) will jointly prepare an Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) to study potential service upgrades and rail corridor improvements to the Salinas to San Luis Obispo portion of the Coast Corridor. The objective of the EIS/EIR is to evaluate alternatives and present environmental analysis to help make decisions regarding the type of service upgrades and rail improvements to be provided in the corridor, including variations in train frequency, trip time, and on-time performance. FRA is also issuing this notice to solicit public and agency input into the development of the scope of the EIS/EIR, whether to tier the environmental process, and to advise the public that public and agency participation resulting from outreach activities conducted by Caltrans and its representatives will be considered in the preparation of the EIS/EIR.

DATES: Written comments on the scope of the EIS/EIR for the Salinas to San Luis Obispo Portion of the Coast Corridor should be provided to Caltrans no later than September 10, 2012. Public scoping meetings are scheduled on August 28 and August 29, 2012 at the times and locations identified in the Addresses section below.

ADDRESSES: Written comments on the scope of this study should be sent to Ms. Emily Burstein, Division of Rail, Office of Planning and Policy, California Department of Transportation, 1120 N Street, MS 74, Sacramento, CA 95814 or via email to coastcorridorscopingcomments@circlepoint.com. Comments may also be provided orally or in writing at the public scoping meetings scheduled at the following locations:

Salinas

Tuesday, August 28, 2012, 3:30 p.m.–6:00 p.m., Transportation Authority for Monterey County (TAMC), TAMC Conference Room, 55 Plaza Circle #B, Salinas, CA 93901.

San Luis Obispo

Wednesday, August 29, 2012, 3:30 p.m.–6:00 p.m., San Luis Obispo County Library Community Room, 995 Palm Street, San Luis Obispo, CA 93401.

FOR FURTHER INFORMATION CONTACT:

Regarding the environmental review please contact: Ms. Emily Burstein, Division of Rail, Office of Planning and Policy, California Department of Transportation, 1120 N Street, MS 74, Sacramento, CA 95814 (telephone: (916) 654-6932) or Ms. Stephanie Perez, Environmental Protection Specialist, Office of Railroad Policy and Development, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 20, Washington, DC 20590 (telephone: (202) 493-0388).

SUPPLEMENTARY INFORMATION:

Purpose and Need

The greater Coast Corridor region from San Jose, California to Los Angeles, California faces significant mobility challenges today. These challenges are likely to continue in the future as continued growth in population, employment, and tourism activity is expected to generate increased travel demand. By 2040, statewide population is expected to grow substantially, further straining the existing transportation network. An effective rail system is necessary to meet the future mobility needs of residents, businesses, and visitors. The Coast Corridor faces continuing transportation challenges as evidenced by the following:

- **Constrained Travel Options**—While the Coast Corridor is served by a transportation system that includes air, highway, and rail modes system access and capacity is insufficient to meet future travel demand. Air access is limited for many residents because major airports are located at a substantial distance outside the Salinas to San Luis Obispo portion of the

corridor. This portion of the corridor is served by a single major highway—US 101—which experiences frequent congestion and travel delays. Amtrak offers a single daily Coast Starlight passenger service along the corridor and trains are often delayed due to the primarily single-track rail system operating beyond its design capacity.

- **Significant Highway Congestion**—While travel by automobile is expected to meet the majority of future travel demand, this increased use will result in worsening of existing congestion. Congestion is particularly acute at the corridor's urban chokepoints and is likely to worsen, making travel times unreliable. In addition, space constraints limit the potential to expand the highway system.

- **Constrained Rail System Capacity**—Corridor rail service could accommodate an increasing portion of projected travel demand growth by providing an alternative mode to automobile travel, but rail service is constrained by infrastructure that is significantly undersized for the volumes it currently accommodates, much less future service, without significant system improvements. Moreover, the existing Coast Starlight service is often fully booked during peak travel periods.

- **Aging Rail Infrastructure**—Investment in corridor rail service has not kept pace with population and travel demand growth, and many tracks, signals and bridges have not been upgraded or improved in decades. Improvements would allow shorter travel times and greater reliability, making rail a more attractive and competitive choice.

- **Safety Concerns**—Increasing potential for accidents in congested rail chokepoints underscores the need for upgraded signaling and infrastructure investments. Growing frequency of rail-related collisions call for improved highway/rail crossings and new or upgraded pedestrian crossings.

- **Need for Increased Travel Capacity Without Impacting Air Quality and Natural Resources**—Highway capacity improvements can have negative impacts on regional and local air quality as well as the efficient use of natural resources. Simultaneously expanding travel capacity while meeting federal and state air quality standards will likely require reductions in total vehicle miles traveled. Rail system improvements offer the opportunity to achieve air quality benefits with minimal impact on natural resources.

In light of the transportation challenges listed above, Caltrans has identified rail improvements to the Coast Corridor as an opportunity to

improve mobility and reliability in this congested part of the state's rail system. The proposed improvements would allow for a more reliable, safe, competitive, and attractive intercity travel option. These improvements would provide additional capacity to relieve some of the projected near- and long-term demand on the highway system, potentially slowing the need to further expand highways and airports in this portion of the corridor, or reduce the scale of those expansions, including their associated cost and impacts on communities and the environment. Rail improvements would augment the highway system, creating an interconnected, multimodal solution, allowing for better mobility throughout the corridor. Improved rail infrastructure would contribute to the economic viability of the Coast Corridor and provide connectivity with local transit systems.

Environmental Review Process

The EIS/EIR will be developed in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 and the Council on Environmental Quality (CEQ) regulations (40 CFR part 1500 *et seq.*) implementing NEPA; the California Environmental Quality Act (CEQA), Division 13, Public Resources Code; and FRA's Procedures for Considering Environmental Impacts (64 FR 28545; May 26, 1999). FRA and Caltrans intend to use a tiered process for the completion of the environmental review of the Coast Corridor, as provided for in 40 CFR 1508.28 and FRA Procedures.

FRA is considering the option of preparing a Tier 1 EIS/EIR. "Tiering" is a staged environmental review process often applied to environmental reviews for complex transportation projects. If used, the initial phase of a tiered process will address broad questions and likely environmental effects for the Salinas to San Luis Obispo portion of the Coast Corridor including, but not limited to, the type of service(s) being proposed, major infrastructure components, and identification of major facility capacity constraints. If tiering is not used, the EIR/EIS will analyze, at a greater level of detail, site-specific proposals that would otherwise be addressed in subsequent phases or tiers based on the decisions made in a Tier 1 EIS/EIR.

Alternatives

Alternatives to be evaluated and analyzed in the EIS/EIR include a no-action (No-Project or No-Build) scenario and an action alternative consisting of multiple options for the construction of

various passenger Coast Corridor improvements between Salinas and San Luis Obispo. Possible environmental impacts from the action alternative include displacement of commercial and residential properties; disproportionate impacts to minority and low-income populations; community and neighborhood disruption; increased noise and vibration along the rail corridor; traffic impacts associated with stations; effects to historic properties or archaeological sites; impacts to parks and recreation resources; visual quality effects; exposure to seismic and flood hazards; impacts to water resources, wetlands, and sensitive biological species and habitat; land use compatibility impacts; energy use; and impacts to agricultural lands.

No Action Alternative

The no action alternative is defined to serve as the baseline for comparison of all alternatives. This alternative represents California's transportation system (highway, air, and rail) as it exists, and as it would exist after completion of programs or projects currently funded or being implemented. The no-action alternative would draw upon the following sources of information:

- State Transportation Improvement Program (STIP).
- Regional Transportation Plans (RTPs) for all modes of travel.
- Airport plans.
- Passenger rail plans.

Action Alternative

This alternative would facilitate expanded passenger service along the Coast Corridor. The Action Alternative will have "options" consisting of logical groupings of improvements that take into account the likely timing of such improvements and possible funding scenarios. The improvements to be analyzed in this alternative may include:

- Track upgrades.
- Curve realignments.
- Siding extensions and upgrades.
- Addition of second main track.
- Grade separations.
- New Stations.
- Station and platform upgrades.
- Installation of Centralized Traffic Control (CTC) and power switches.
- New or upgraded pedestrian crossings.

Scoping and Comments

FRA encourages broad participation in the EIS/EIR process during scoping and subsequent review of the resulting environmental document. Letters

soliciting comments were sent to appropriate Federal, State, and local agencies, and appropriate railroads. Comments and suggestions are invited from all interested agencies and the public at large to insure the full range of issues related to the proposed action and all reasonable alternatives are addressed and all significant issues are identified. In particular, FRA is interested in determining whether there are areas of environmental concern where there might be the potential for significant impacts identifiable at a program level. Public agencies with jurisdiction are requested to advise the FRA and Caltrans of the applicable permit and environmental review requirements of each agency, and the scope and content of the environmental information that is germane to the agency's statutory responsibilities in connection with the proposed improvements.

Issued in Washington, DC, on August 13, 2012.

Corey Hill,

Director, Rail Project Development and Delivery.

[FR Doc. 2012-20245 Filed 8-16-12; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Early Scoping Notification for the Alternatives Analysis of the Tacoma Link Expansion in Tacoma, WA

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notification of early scoping meeting.

SUMMARY: The Federal Transit Administration (FTA) and the Central Puget Sound Regional Transit Authority (Sound Transit) issue this early scoping notice to advise other agencies and the public that they intend to explore potential alternatives for expanding the existing Tacoma Link light rail transit system in Tacoma, Pierce County Washington, in order to improve connections to the regional transit system and major activity centers. This notice invites the public to help frame the upcoming alternatives analysis by commenting on: the project's purpose and need, the transportation problems to be addressed by the study, potential solutions to the problems, the relevant transportation and community impacts and benefits to be considered, the appropriate extent of the study area, and ways for the public to participate in the alternatives analysis process. The

alternatives analysis is likely to conclude with the identification of a preferred mode and corridor. If preparation of an environmental Impact Statement (EIS) is warranted following completion of the planning alternatives analysis, FTA will publish a Notice of Intent to prepare an EIS.

This early scoping process is intended to support the alternatives analysis and a future National Environmental Policy Act (NEPA) scoping process, as appropriate. In addition, it supports FTA planning requirements associated with the New Starts ("Section 5309") funding program for certain kinds of major capital investments. While recent legislation may lead to changes in the New Starts process, Sound Transit will comply with relevant FTA requirements relating to planning and project development to help it analyze and screen alternatives in preparation for NEPA.

Public meetings are described immediately below. Following that is a more detailed discussion of the project and this early scoping process.

DATES: Combined scoping meetings where agencies and the public can learn more about and comment on the proposal will be held on August 22, 2012 at the following times and locations:

1. People's Community Center, 1602 S. Martin Luther King Jr. Way, Tacoma, WA, 11 a.m. to 1 p.m.
2. Tacoma Dome Station Plaza, 424 E 25th St., Tacoma, WA, 4 p.m. to 7 p.m.

At the public and agency scoping meetings, Sound Transit will provide information on the alternatives analysis along with opportunities for written comments. Information is also available at www.soundtransit.org/TacomaLinkExpansion. Written scoping comments are requested by September 17, 2012 and can be sent or emailed to the address below, submitted at a public meeting, or sent via the comment form at www.soundtransit.org/TacomaLinkExpansion.

ADDRESSES: Erin Hunter, Sound Transit, 401 S. Jackson St., Seattle, WA 98104-2826, or by email to erin.hunter@soundtransit.org.

FOR FURTHER INFORMATION CONTACT: John Witmer, FTA Community Planner, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174; Phone: (206) 220-7964; email: John.Witmer@dot.gov.

SUPPLEMENTARY INFORMATION:

Early Scoping

The alternatives analysis provides the local forum for evaluating the costs, benefits, and impacts of a range of transportation alternatives designed to address mobility problems and other locally-identified objectives in a defined transportation corridor, and it provides an opportunity for determining which particular investment strategy should be advanced for more focused study and development. Early scoping for the Tacoma Link Expansion project is in accordance with NEPA policies stated in the Council on Environmental Quality's regulations and guidance for implementing NEPA, which encourage federal agencies to initiate NEPA early in their planning processes. See 40 CFR 1501.2 through 8. It allows the scoping process to begin as soon as there is enough information to describe the proposal so that the public and relevant agencies can participate effectively. This is particularly useful when a potential proposed action involves a broadly defined corridor with an array of modal and alignment alternatives under consideration.

This early scoping notice solicits public comments on the scope of the planning alternatives analysis, including the purpose and need for the project, a range of alternatives, and the environmental, transportation and community impacts and benefits to be considered.

Tacoma Link and the Regional Transit System

The Tacoma Link light rail transit system is currently 1.6 miles long and serves six at-grade stations. It serves the Tacoma Dome Station (with connections to Sound Transit's Sounder commuter rail service and Regional Express bus service, as well as Pierce Transit and Intercity Transit), the University of Washington-Tacoma, Union Station, the Greater Tacoma Convention and Trade Center, and the downtown Tacoma business and theater districts.

Sound Move, the first phase of regional transit investments, was approved and funded by voters in 1996. Sound Transit is now completing its implementation. It includes light rail, commuter rail and regional express bus infrastructure and service, including the Central Link light rail system between Northgate, the University of Washington, downtown Seattle, Tukwila and SeaTac. In 2003, Tacoma Link light rail operation began. Regional Express bus service includes routes connecting the Tacoma Dome Station to other regional destinations, including Sea-Tac Airport and downtown Seattle.

Sounder commuter rail service connects Tacoma to Seattle's King Street Station and north through several stops to an Everett terminus. In 2004, Sound Transit began planning for the phase of investment to follow *Sound Move*. This work included updating Sound Transit's Long-Range Plan and associated environmental review. Following several years of system planning work to detail, evaluate, and prioritize the next round of regional transit system expansion, voters in 2008 authorized funding to extend the Tacoma Link light rail system as part of the Sound Transit 2 (ST2) Plan. The ST2 Plan also extends light rail to Bellevue and Redmond to the east, to Northgate and Lynnwood to the north, and to Federal Way to the south.

Transportation Purpose of the Tacoma Link Expansion Project

Sound Transit invites comments on the following preliminary statement of the project's purpose and need.

The purpose of the Tacoma Link Expansion is to improve mobility and access to the regional transit system for Tacoma residents, employees, and visitors by connecting the existing Tacoma Link system with Tacoma's major activity centers and destinations within the City. The need for this project arises from:

- The need to meet the rapidly growing connectivity needs of the corridor and the region's future residents and workers by increasing mobility, access, and transportation capacity to and from regional growth and activity centers in Tacoma and the rest of the region, as called for in the region's adopted plans, including the Puget Sound Regional Council's (PSRC) VISION 2040 and *Transportation 2040*, as well as related county and city comprehensive plans.
- The need to link downtown Tacoma with other City growth centers. City Comprehensive Plan policies specify the city's intention to locate major residential and employment growth in Mixed Use and Manufacturing/Industrial Centers. Extending the Tacoma Link to these centers would encourage denser, more transit-oriented development and further concentrate higher-wage manufacturing and industrial jobs, and reduce the number of vehicle miles traveled as commute trips.
- The need to serve increasing commute trips to the downtown core via transit. Tacoma's downtown core contains a majority of the jobs within the city today and is projected to continue to do so in the future. Increasing numbers of commuters will

need alternative ways to access jobs within the downtown core.

- The need to support the land use planning goals of Tacoma's South Downtown Subarea Plan, the MLK Subarea Plan and the other Growth and Employment centers. Several current City planning processes are designed to encourage transit-oriented, mixed-use development and economic revitalization in areas of Tacoma that are designated for future regional growth concentrations.

- The need to reduce greenhouse gas emissions within the City of Tacoma. The City of Tacoma Climate Action Plan calls for substantial reductions in greenhouse gas emissions. Transportation causes 53% of Tacoma greenhouse gas emissions. A Tacoma Link extension would support City plans to increase the use of all public transportation modes.

- The need to support economic development in downtown Tacoma. The Downtown Tacoma Economic Development Strategy lists the existing Tacoma Link as a key asset that establishes downtown's identity and may help encourage future development and investment. One of the City of Tacoma's primary goals for economic development is to stimulate investor interest in downtown. The expansion of Tacoma Link presents an opportunity to achieve the City's economic development goals.

- The following goals and objectives, which are a part of Sound Transit's Regional Transit Long-Range Plan (2005) and its long-range vision for regional transit:

- Ensure long-term mobility, connectivity and convenience;
- Preserve communities and open space;
- Contribute to the region's economic vitality;
- Preserve the environment; and
- Strengthen communities' use of the regional transit network.

Potential Alternatives

Sound Transit will explore alternative mode, alignment, and design configurations for an expansion of the Tacoma Link light rail system. At least one alternative analyzed will be a Bus Rapid Transit (BRT) alternative. Sound Transit conducted a "pre-alternatives analysis" and issued a report in September 2011. The pre-alternatives analysis evaluated eight potential corridors for the expansion of Tacoma Link. Six of the corridors were proposed by a stakeholder group, which included diverse representation of Tacoma and the region. Sound Transit included two additional corridors for assessment in

the pre-alternatives analysis to address the potential corridors for Tacoma Link expansion contemplated in Sound Transit's Regional Transit Long-Range Plan (2005). Sound Transit invites comments on the alternative transit modes, alignments, and station locations to be studied, and on proposed evaluation measures to be used to compare alternatives. Alternatives already identified for consideration include:

- North End—Extends north from Theater District to Stadium District; west to University of Puget Sound.
- North End Central—Extends north from Theater District to Stadium District; west via Division Ave./6th St. to Alder/Cedar St.
- North Downtown Central—Extends north from Theater District to Stadium District; west to north end of MLK district and south to S. 19th St.
- South Downtown to MLK—Extends from Union Station west to S. 19th St., north through MLK district to Division St.
- South Downtown Central—Extends from Union Station west to S. 19th St., continues west to Tacoma Community College.
- South End—Extends from 25th Street Station south to 34th & Pacific District to S. 38th St., west to Tacoma Mall.
- Eastside—Extends east from Tacoma Dome, south towards Salishan to 72nd St. Transit Center.
- Pacific Highway—Extends east from Tacoma Dome to the Puyallup Tribe's commercial center on Pacific Highway South at Fife.

Sound Transit may also consider other alternatives that arise during the public comment period.

The definition of these alternatives for analysis will reflect a range of high and low cost capital improvements, including non-guideway options which can serve as a "baseline" for measuring the merits of more expensive investments. Sound Transit will identify measures for evaluating the relative merits of alternatives, and technical methodologies for generating the information used to support such measures. These measures will typically include disciplines such as travel forecasting, capital and operations and maintenance costs, and corridor-level environmental and land use analyses. Sound Transit will also develop and assess the costs, benefits, and impacts of each alternative and analyze funding strategies.

At the end of the alternatives analysis process, Sound Transit and the FTA anticipate identifying a preferred mode and corridor for further evaluation in a

NEPA environmental document (the classification of which is to be determined). If the preferred mode and corridor involve the potential for significant environmental impacts requiring an EIS, a Notice of Intent to Prepare an EIS will be published in the **Federal Register**, and public and agency comment on the scope of the EIS will be invited and considered at that time.

Issued on: August 9, 2012.

Richard Krochalis,
Regional Administrator.

[FR Doc. 2012-20220 Filed 8-16-12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2012-0091]

Proposed Traffic Records Program Assessment Advisory

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice announces the publication of the *Traffic Records Program Assessment Advisory*, DOT HS 811 644, which provides guidance to States on the collection, management, and analysis of data used to inform highway and traffic safety decision-making. States need timely, accurate, complete, and uniform traffic records to identify and prioritize traffic safety issues and to choose appropriate countermeasures and evaluate their effectiveness. This document provides information on the contents, capabilities, and data quality attributes of an effective traffic records system, and includes assessment questions that qualified independent assessors can use to evaluate the capabilities of a State's traffic records system.

DATES: Written comments may be submitted to this agency and must be received no later than October 16, 2012.

ADDRESSES: You may submit comments identified by DOT Docket ID number NHTSA-2011-0044 by any of the following methods:

- *Electronic Submissions:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 202-366-2746.

- *Mail:* Docket Management Facility, M-30 U.S. Department of Transportation, West Building, Ground floor, Room W12-140, 1200 New Jersey Ave. SE., Washington, DC 20590.

• *Hand Delivery or Courier:* Docket Management Facility, M-30 U.S. Department of Transportation, West Building, Ground floor, Room W12-140, 1200 New Jersey Ave. SE., Washington, DC 20590, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

Regardless of how you submit your comments, you should identify the Docket number of this document.

Instructions: For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>.

Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please read the "Privacy Act" heading below.

Privacy Act: Anyone is able to search the electronic form of all contents 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 the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/search/footer/privacyanduse.jsp>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For programmatic issues: John Siegler, Office of Traffic Records and Analysis, NVS-423, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone (202) 366-1268. For legal issues: Roland Baumann, Office of Chief Counsel, NCC-113, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone (202) 366-5260.

SUPPLEMENTARY INFORMATION: Timely, accurate, complete, and uniform traffic records data is needed to identify and prioritize traffic safety issues, and choose appropriate countermeasures and evaluate their effectiveness. The National Highway Traffic Safety Administration published the *Traffic Records Program Assessment Advisory* (DOT HS 811 644) to provides guidance to States on the collection, management and analysis of data from the crash,

driver, vehicle, roadway, citation and adjudication, and injury surveillance databases.

This document describes the capabilities of traffic records systems and includes a set of questions, which are the basis for an in-depth formal review of State highway safety data and State traffic records systems. Specifically, these questions examine how the State Traffic Records Coordinating Committee (TRCC) collects, manages, and integrates information on the crash, driver, vehicle, roadway, citation and adjudication, and injury surveillance databases. This assessment instrument was created in response to the GAO recommendation (GAO-10-454) that "NHTSA take steps to ensure state traffic records assessments are complete and consistent to provide an in-depth evaluation of all state traffic safety data systems across all performance measures".

During a traffic records assessment, assessors will evaluate the response to each question. Per the *Advisory*, the system being evaluated will be deemed to be: (1) Meeting the description of the ideal traffic records system, (2) partially meeting the ideal description, or (3) not meeting the ideal description. These assessments will identify the strengths and weaknesses of each component of the State's traffic records systems and provide the State with an overview of the current status of their traffic records program that can be used to benchmark improvement efforts. In addition, NHTSA will aggregate this data to examine the strengths and weaknesses of traffic records systems nationally. The full text of the *Traffic Records Program Assessment Advisory*, DOT HS 811 644, is available at <http://www-nrd.nhtsa.dot.gov/Pubs/811644.pdf>.

Terry T. Shelton,

Associate Administrator, National Center for Statistics and Analysis.

[FR Doc. 2012-20249 Filed 8-16-12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Modification of Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before September 4, 2012.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington DC or at <http://regulations.gov>.

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 7, 2012.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
MODIFICATION SPECIAL PERMITS				
6691-M		Matheson Tri-Gas, Inc., Basking Ridge, NJ.	49 CFR 180.209(b)(i)	To modify the special permit to remove Linde's reference within paragraph 7.b. and add additional operational controls.
11273-M		Cherry Air, Inc., Addison, TX.	49 CFR Part 107, Subpart B, Appendix B with exceptions; 172.101; 172.204(c)(3); 173.27(b)(2)(3); 175.30(a)(1).	To modify the special permit to authorize Division 1.5 and 1.6 explosives which are forbidden or exceed the quantity limitation authorized for transportation by cargo aircraft.
11989-M		Department of Defense, Scott AFB, IL.	49 CFR 172.504; 176.83(a), (b), (c)(2)(iii), (d) and (f).	To modify the special permit to authorize an additional Division 2.2 hazardous materials, modify the list of permitted guided bombs, packages, and operational controls.
14206-M		Digital Wave Corporation, Centennial, CO.	49 CFR 180.205	To modify the special permit to authorize ISO 9809-2 cylinders be UE recertified.

[FR Doc. 2012-19835 Filed 8-16-12; 8:45 am]

BILLING CODE 4909-60-M

DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials Safety Administration****Notice of Application for Special Permits**

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of

Transportation's Hazardous Material Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Mot/or vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 17, 2012.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Records Center, East Building, PHI-I-30, 1200 New Jersey Avenue Southeast, Washington DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 7, 2012.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
NEW SPECIAL PERMITS				
15658-N		Xcel Energy, Monticello, MN	49 CFR 173.427(b)(1)	To authorize the transportation in commerce of certain Radioactive material in alternative packaging by highway. (mode 1).
15671-N		Formulated Solutions, Largo, FL.	49 CFR 173.306(a)(3)(v)	To authorize construction of DOT 2P or DOT 2Q non-refillable aerosol container using an alternative leak test in lieu of the hot water bath. (modes 1, 2, 3, 4).
15675-N		The Boeing Company, St. Louis, MO.	49 CFR 172.101 Column (9B).	To authorize the one-time transportation in commerce of certain explosives that are forbidden for transportation by cargo only aircraft.
15676-N		Iberica del Espacio, S.A	49 CFR 172.101 Column (9B).	To authorize the transportation in commerce of anhydrous ammonia by cargo aircraft exceeding the quantities authorized in Column (9B).
15678-N		Department of State, Washington, DC.	49 CFR 171.22(a) and ICAO TI Special Provision A67.	To authorize the transportation in commerce of non-spillable batteries in diplomatic pouches without requiring marking of the waybill.
15683-N		CESSCO, Johns Island, SC	49 CFR 180.209(g)	To authorize the transportation in commerce of certain 4BW240 cylinders that have been tested using an alternative testing procedure.
15684-N		Pratt & Whitney Rocketdyne, Inc, Canoga Park, CA.	49 CFR 173.185(4)	To authorize the transportation in commerce of power systems that consist of lithium ion battery assemblies.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
15686-N		Smoky Mountain Helicopters, Inc., Hanapepe, HI.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2), 172.200, 172.300, Part 173, 175.30(a)(1) and 175.75.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.
15688-N		Airborne Aviation, Lihue, HI	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2), 172.200, 172.300, Part 173, 175.30(a)(1) and 175.75.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.

[FR Doc. 2012-19833 Filed 8-16-12; 8:45 am]

BILLING CODE 4909-60-M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35659]

Santa Cruz and Monterey Bay Railway Company—Acquisition and Operation Exemption—Union Pacific Railroad Company

Santa Cruz and Monterey Bay Railway Company (SCMB), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Union Pacific Railroad Company (UP) and operate a permanent and exclusive operating easement over a 31.0-mile line (the Line). The Line, known as the Santa Cruz Branch, extends from milepost 0.433 at the east boundary of Salinas Road, near Watsonville Junction, Cal., to milepost 31.39 at the end of the line near Davenport, Cal., and includes an interconnection with Santa Cruz, Big Trees & Pacific Railway Company at milepost 20.4 in Santa Cruz, Cal., and an additional 3.6 miles of siding and spur track. SCMB states that there are no agreements applicable to the Line that contain any provisions that may limit future interchange with a third-party carrier.

In two related proceedings, verified notices of exemption were filed for: (1) Iowa Pacific Holdings, LLC, and Permian Basin Railways to continue in control of SCMB upon SCMB's becoming a Class III rail carrier, *Iowa Pacific Holdings, LLC & Permian Basin Rys.—Continuance in Control Exemption—Santa Cruz & Monterey Bay Ry.*, Docket No. FD 35632; and (2) SCMB to acquire by assignment from Sierra Northern Railway its lease and operating rights over the Line, *Santa Cruz & Monterey Bay Ry.—Assignment of Lease Exemption—Union Pacific R.R.*

& Sierra Northern Ry., Docket No. FD 35633.¹

The transaction may be consummated on or after September 2, 2012 (30 days after the notice of exemption was filed).

SCMB certifies that its projected annual revenues as a result of this transaction will not result in SCMB's becoming a Class II or Class I rail carrier and will not exceed \$5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than August 24, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35659, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on John D. Heffner, Strasburger & Price, LLP, 1700 K Street NW., Suite 640, Washington, DC 20006.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: August 14, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2012-20236 Filed 8-16-12; 8:45 am]

BILLING CODE 4915-01-P

¹ Related to these notices of exemption is a petition for a declaratory order filed by the Santa Cruz County Regional Transportation Commission (SCCRTC). See *Santa Cruz Cnty. Reg'l Transp. Comm'n—Petition for Declaratory Order*, Docket No. FD 35653. SCCRTC seeks a finding that its purchase of the physical assets of the Line from UP is not subject to the Board's approval jurisdiction and will not result in SCCRTC acquiring a common carrier obligation with respect to the Line. The petition will be addressed in a separate decision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35633]

Santa Cruz and Monterey Bay Railway Company—Assignment of Lease Exemption—Union Pacific Railroad Company and Sierra Northern Railway

Santa Cruz and Monterey Bay Railway Company (SCMB), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by assignment from Sierra Northern Railway its lease and operating rights over a 31.0-mile rail line (the Line) owned by Union Pacific Railroad Company (UP). The Line, known as the Santa Cruz Branch, extends from milepost 0.433 at the east boundary of Salinas Road, near Watsonville Junction, Cal., to milepost 31.39 at the end of the line near Davenport, Cal., and includes an interconnection with Santa Cruz, Big Trees & Pacific Railway Company at milepost 20.4 in Santa Cruz, Cal., and an additional 3.6 miles of siding and spur track. SCMB states that there are no agreements applicable to the Line that contain any provisions that may limit future interchange with a third-party carrier.

In two related proceedings, verified notices of exemption were filed for: (1) Iowa Pacific Holdings, LLC and Permian Basin Railways to continue in control of SCMB upon SCMB's becoming a Class III rail carrier, *Iowa Pacific Holdings, LLC & Permian Basin Rys.—Continuance in Control Exemption—Santa Cruz & Monterey Bay Ry.*, Docket No. FD 35632; and (2) SCMB to acquire from UP and operate a permanent and exclusive operating easement over the Line, *Santa Cruz & Monterey Bay Ry.—Acquis. & Operation Exemption—Union Pacific R.R.*, Docket No. FD 35659.¹

¹ Related to these notices of exemption is a petition for a declaratory order filed by the Santa

The transaction may be consummated on or after August 31, 2012 (the effective date of the exemption).

SCMB certifies that its projected annual revenues as a result of this transaction will not result in SCMB's becoming a Class II or Class I rail carrier and will not exceed \$5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than August 24, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35633, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy must be served on John D. Heffner, Strasburger & Price, LLP, 1700 K Street NW., Suite 640, Washington, DC 20006.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: August 14, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,
Clearance Clerk.

[FR Doc. 2012-20241 Filed 8-16-12; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35657]

Pacific Imperial Railroad, Inc.—Change in Operator Exemption—Rail Line of San Diego and Arizona Eastern Railway Company

Pacific Imperial Railroad, Inc. (PIR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to change operators, pursuant to an agreement with Carrizo Gorge Railway, Inc. (CGR),¹ from CGR to PIR over a 70.01-mile rail line between milepost

59.60 in Division, Cal. and milepost 129.61 in Plaster City, Cal. (Desert Line).² The Desert Line is owned by San Diego and Arizona Eastern Railway Company (SD&AE). The agreement provides for a change in operators for the Desert Line through CGR's assignment of its authority to operate the Desert Line to PIR, with the consent of SD&AE, its parent, San Diego Metropolitan Transit Development Board, and SD&IV.

The transaction may be consummated on or after August 31, 2012 (30 days after the notice of exemption was filed).

PIR certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues will not exceed \$5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 24, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35657, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: August 13, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2012-20260 Filed 8-16-12; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35632]

Iowa Pacific Holdings, LLC and Permian Basin Railways—Continuance in Control Exemption—Santa Cruz and Monterey Bay Railway Company

Iowa Pacific Holdings, LLC, and Permian Basin Railways (IPH/PBR), noncarriers, have filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of Santa Cruz and Monterey Bay Railway Company (SCMB) upon SCMB's becoming a Class III rail carrier.¹

In a concurrently filed verified notice of exemption, SCMB seeks Board approval to acquire by assignment from Sierra Northern Railway its lease and operating rights over a 31.0-mile rail line (the Line) owned by Union Pacific Railroad Company (UP). The Line, known as the Santa Cruz Branch, extends from milepost 0.433 at the east boundary of Salinas Road, near Watsonville Junction, Cal., to milepost 31.39 at the end of the line near Davenport, Cal., and includes an interconnection with Santa Cruz, Big Trees & Pacific Railway Company at milepost 20.4 in Santa Cruz, Cal., and an additional 3.6 miles of siding and spur track. *Santa Cruz & Monterey Bay Ry.—Assignment of Lease Exemption—Sierra N. Ry.*, Docket No. FD 35633.

In addition, SCMB has filed a related verified notice of exemption to acquire from UP its permanent and exclusive operating easement over the Line.² *Santa Cruz & Monterey Bay Ry.—Acquis. & Operation Exemption—Union Pac. R.R.*, Docket No. FD 35659.

The transaction may be consummated on or after August 31, 2012 (the effective date of the exemption).

IPH/PBR subsidiary railroads include: (1) Chicago Terminal Railroad, located in and around Chicago, Ill.; (2) Mount Hood Railroad, located in Oregon; (3) San Luis & Rio Grande Railroad, located in Colorado; (4) Saratoga & North Creek Railway, located in New York; (5)

¹ PBR and SCMB are wholly owned subsidiaries of IPH.

² Related to these notices of exemption is a petition for a declaratory order filed by the Santa Cruz County Regional Transportation Commission (SCCRTC). See *Santa Cruz Cnty. Reg'l Transp. Comm'n—Petition for Declaratory Order*, Docket No. FD 35653. SCCRTC seeks a finding that its purchase of the physical assets of the Line from UP is not subject to the Board's approval jurisdiction and will not result in SCCRTC acquiring a common carrier obligation with respect to the Line. As part of the transaction, UP will retain the permanent and exclusive operating easement over the Line that SCMB is seeking to acquire. The petition will be addressed in a separate decision.

Cruz County Regional Transportation Commission (SCCRTC). See *Santa Cruz Cnty. Reg'l Transp. Comm'n—Petition for Declaratory Order*, Docket No. FD 35653. SCCRTC seeks a finding that its purchase of the physical assets of the Line from UP is not subject to the Board's approval jurisdiction and will not result in SCCRTC acquiring a common carrier obligation with respect to the Line. The petition will be addressed in a separate decision.

¹ CGR was authorized to operate the Desert Line in *Carrizo Gorge Railway—Operation Exemption—San Diego and Eastern Railway*, FD 34485 (STB served Apr. 12, 2004).

² PIR states that San Diego & Imperial Valley Railroad Company, Inc. (SD&IV) has residual authority to operate the Desert Line and has agreed to assign that authority to PIR. PIR states that it will file another notice of exemption for Board approval at the appropriate time regarding that assignment.

Texas-New Mexico Railroad, located in New Mexico and Texas; and (6) West Texas & Lubbock Railway, located in Texas.

IPH/PBR represent that: (1) The Line does not connect with any other railroads in the corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the Line with any other railroads in the corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than August 24, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35632, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John D. Heffner, Strasburger & Price, LLP, 1700 K Street NW., Suite 640, Washington, DC 20006.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: August 14, 2012.

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Derrick A. Gardner,
Clearance Clerk.

[FR Doc. 2012-20240 Filed 8-16-12; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Iraq
Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen

Dated: August 13, 2012.

Danielle Rolfes,

Acting International Tax Counsel, Tax Policy.

[FR Doc. 2012-20182 Filed 8-16-12; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of One (1) Entity Pursuant to Executive Order 13582 of August 17, 2011, "Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria"

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name of one (1) entity whose property and interests in property are blocked pursuant to Executive Order 13582 of August 17, 2011, "Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria."

DATES: The designation by the Director of OFAC of the one (1) entity identified in this notice, pursuant to Executive

Order 13582, is effective on August 10, 2012.

FOR FURTHER INFORMATION CONTACT:

Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW., (Treasury Annex), Washington, DC 20220, Tel.: 202/622-2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (www.treas.gov/ofac) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622-0077.

Background

On August 17, 2011, the President issued Executive Order 13582, "Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria," (the "Order") pursuant to, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. 1701-06). In the Order, the President took additional steps with respect to the national emergency declared in Executive Order 13338 of May 11, 2004, which was modified in scope and relied upon for additional steps taken in Executive Order 13399 of April 25, 2006, Executive Order 13460 of February 13, 2008, Executive Order 13572 of April 29, 2011, and Executive Order 13573 of May 18, 2011.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, of (1) the Government of Syria; (2) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, (a) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, any person whose property and interests in property are blocked pursuant to the Order; or (b) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On August 10, 2012, the Director of OFAC, in consultation with the Department of State, designated, pursuant to one or more of the criteria set forth in subsection 1(b) of the Order,

one (1) entity whose property and interests in property are blocked pursuant to Executive Order 13582.

The listing for the entity on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

Entity

1. HIZBALLAH (a.k.a. ANSAR ALLAH; a.k.a. FOLLOWERS OF THE PROPHET MUHAMMED; a.k.a. ISLAMIC JIHAD; a.k.a. ISLAMIC JIHAD FOR THE LIBERATION OF PALESTINE; a.k.a. ISLAMIC JIHAD ORGANIZATION; a.k.a. ORGANIZATION OF RIGHT AGAINST WRONG; a.k.a. ORGANIZATION OF THE OPPRESSED ON EARTH; a.k.a. PARTY OF GOD; a.k.a. REVOLUTIONARY JUSTICE ORGANIZATION) [FTO] [SDGT] [SDT] [SYRIA].

Dated: August 13, 2012.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2012-20194 Filed 8-16-12; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Availability of an Environmental Impact Statement (EIS) for the San Francisco Veterans Affairs Medical Center (SFVAMC) Long Range Development Plan (LRDP)

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, (42 U.S.C. 4331 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Requirements of NEPA (40 CFR parts 1500-1508), VA's Implementing Regulations (38 CFR part 26), as well as the settlement agreement resulting from *Planning Association for Richmond, et al. v. U.S. Department of Veterans Affairs*, C-06-02321-SBA (filed 6 June 2008), VA has prepared a Draft EIS for the proposed implementation of the SFVAMC LRDP in San Francisco, California. The SFVAMC LRDP involves development and construction of patient care buildings, research buildings, business occupancy buildings, and parking structures, as well as retrofitting seismically deficient buildings. The Draft EIS identifies and evaluates environmental factors associated with new construction, demolition, as well as seismic retrofit to upgrade the SFVAMC

for purposes of meeting the needs of Veterans of the North Coast and San Francisco Bay Area over the next 20 years.

DATES: Interested parties are invited to submit comments in writing on the SFVAMC LRDP Draft EIS by October 16, 2012. Interested parties are also invited to participate in a public meeting regarding the SFVAMC LRDP Draft EIS on September 20, 2012 at SFVAMC (4150 Clement Street, San Francisco, CA 94121, Building 7, 1st Floor, Auditorium) at 5 p.m. At the public meeting, interested parties will also have the opportunity to comment regarding the National Historic Preservation Act Section 106 process.

ADDRESSES: Submit written comments on the SFVAMC LRDP Draft EIS through www.regulations.gov. Please refer to: "SFVAMC LRDP Draft EIS" in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Chief Engineer, Engineering Service (138), San Francisco Veterans Affairs Medical Center, 4150 Clement Street, San Francisco, CA 94121 or by telephone, (415) 221-4810, extension 2009. The SFVAMC LRDP and LRDP Draft EIS are available for viewing on the SFVAMC Web site: <http://www.sanfrancisco.va.gov/planning>.

SUPPLEMENTARY INFORMATION: VA operates the SFVAMC, located at Fort Miley in San Francisco, California. It is the only VAMC in the City and County of San Francisco and is considered an aging facility with need for retrofitting and expansion. The SFVAMC has identified a need for retrofitting existing buildings to the most recent seismic safety requirements and for an additional 589,000 square feet of building space (in addition to the existing nearly one million square feet of building space) to meet the needs of San Francisco Bay Area and northern California coast Veterans over the next 20 years.

Three alternatives were evaluated in the Draft EIS. *Alternative 1* would include the addition of 244,000 square feet (or 394,000 square feet including parking structure space) of medical and research space and seismic retrofit of nine existing buildings at the existing SFVAMC site, a 29-acre site located at Fort Miley in the northwestern portion of San Francisco. *Alternative 2* would include the addition of 124,000 square feet (or 274,000 square feet including parking structure space) of medical and research space and seismic retrofit of nine existing buildings at the existing SFVAMC site as well as the construction of 350,000 square feet (or

620,000 square feet including parking structure space) of new ambulatory care and research space at a new alternate site in the Mission Bay area of San Francisco. *Alternative 3* is the No Action Alternative.

Environmental topics that have been addressed in the Draft EIS include: aesthetics, air quality, community services, cultural resources, coastal management, geology and soils, greenhouse gas emissions, hydrology and water quality, land use, noise, socioeconomics, hazards, transportation and parking, utilities, and biological resources. Relevant and reasonable measures that could alleviate environmental effects have been considered and are included where relevant within the Draft EIS.

Information related to the EIS process, including notices of public meetings, will be available for viewing on the SFVAMC Web site: <http://www.sanfrancisco.va.gov/>.

Approved: August 9, 2012.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2012-20243 Filed 8-16-12; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Geriatrics and Gerontology Advisory Committee will be held on September 5-6, 2012, in Room C-7 at the Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC. On September 5, the session will begin at 8:30 a.m. and end at 5 p.m. On September 6, the session will begin at 8 a.m. and end at 12 noon. This meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology. The Committee assesses the capability of VA health care facilities and programs to meet the medical, psychological, and social needs of older Veterans and evaluates VA programs designated as Geriatric Research, Education, and Clinical Centers.

The meeting will feature presentations and discussions on VA's geriatrics and extended care programs, aging research activities, updates on VA's employee staff working in the area of geriatrics (to include training,

recruitment and retention approaches), Veterans Health Administration (VHA) strategic planning activities in geriatrics and extended care, recent VHA efforts regarding dementia and program advances in palliative care, and performance and oversight of VA Geriatric Research, Education, and Clinical Centers.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments for review by the Committee to Mrs. Marcia Holt-Delaney, Program Analyst, Office of Geriatrics and Extended Care (10P4G), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or via email at

Marcia.Holt-Delaney@va.gov.

Individuals who wish to attend the meeting should contact Mrs. Holt-Delaney at (202) 461-6769.

Dated: August 13, 2012.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012-20189 Filed 8-16-12; 8:45 am]

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory
Bird Hunting Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 20**

[Docket No. FWS-R9-MB-2012-0005;
FF09M21200-123-FXMB1231099BPP0L2]

RIN 1018-AX97

**Migratory Bird Hunting; Proposed
Frameworks for Late-Season Migratory
Bird Hunting Regulations**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2012–13 late-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: You must submit comments on the proposed migratory bird hunting late-season frameworks by August 31, 2012.

ADDRESSES: You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R9-MB-2012-0005.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R9-MB-2012-0005, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, MS 2042-PDM, Arlington, VA 22203.

We will not accept emailed or faxed comments. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP-4107-ARLSQ, 1849 C Street NW., Washington, DC 20240; (703) 358-1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2012

On April 17, 2012, we published in the **Federal Register** (77 FR 23094) a

proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2012–13 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 17 proposed rule.

Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings. Those headings are:

1. Ducks
 - A. General Harvest Strategy
 - B. Regulatory Alternatives
 - C. Zones and Split Seasons
 - D. Special Seasons/Species Management
 - i. September Teal Seasons
 - ii. September Teal/Wood Duck Seasons
 - iii. Black Ducks
 - iv. Canvasbacks
 - v. Pintails
 - vi. Scaup
 - vii. Mottled Ducks
 - viii. Wood Ducks
 - ix. Youth Hunt
 - x. Mallard Management Units
 - xi. Other
2. Sea Ducks
3. Mergansers
4. Canada Geese
 - A. Special Seasons
 - B. Regular Seasons
 - C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-Winged and White-Tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Subsequent documents will refer only to numbered items requiring attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

On May 17, 2012, we published in the **Federal Register** (77 FR 29516) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The May 17 supplement also provided

detailed information on the 2012–13 regulatory schedule and announced the Service Regulations Committee (SRC) and Flyway Council meetings.

On June 12, 2012, we published in the **Federal Register** (77 FR 34931) a third document revising our previously announced dates of the June 2012 SRC meetings.

On June 19 and 20, 2012, we held open meetings with the Flyway Council Consultants where the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2012–13 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2012–13 regular waterfowl seasons.

On July 20, 2012, we published in the **Federal Register** (77 FR 42920) a fourth document specifically dealing with the proposed frameworks for early-season regulations. In late August 2012, we will publish a rulemaking establishing final frameworks for early-season migratory bird hunting regulations for the 2012–13 season.

On July 25–26, 2012, we held open meetings with the Flyway Council Consultants, at which the participants reviewed the status of waterfowl and developed recommendations for the 2012–13 regulations for these species. This document deals specifically with proposed frameworks for the late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours, areas, and limits.

We have considered all pertinent comments received through July 27, 2012, on the April 17 and May 17, 2012, rulemaking documents in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. The comment period is specified above under **DATES**. We will publish final regulatory frameworks for late-season migratory game bird hunting in the **Federal Register** on or around September 21, 2012.

Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and

upland game birds excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at <http://www.fws.gov/migratorybirds/NewsPublicationsReports.html>.

Waterfowl Breeding and Habitat Survey

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft, helicopters, and ground crews and encompass principal breeding areas of North America, covering an area over 2.0 million square miles. The traditional survey area comprises Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Overall, habitat conditions during the 2012 Waterfowl Breeding Population and Habitat Survey were characterized by average to below-average moisture, a mild winter, and an early spring across the southern portion of the traditional and eastern survey areas. Northern habitats of the traditional and eastern survey areas generally received average moisture and temperatures. The total pond estimate (Prairie Canada and U.S. combined) was 5.5 ± 0.2 million. This was 32 percent below the 2011 estimate of 8.1 ± 0.2 million ponds, and 9 percent above the long-term average of 5.1 ± 0.03 million ponds. Additional details of the 2012 Survey were provided in the July 20 **Federal Register** and are available from our Web site at <http://www.fws.gov/migratorybirds/NewsPublicationsReports.html>.

Breeding Population Status

In the traditional survey area, which includes strata 1–18, 20–50, and 75–77, the total duck population estimate was 48.6 ± 0.8 [SE] million birds. This estimate represents an 7 percent increase over last year's estimate of 45.6 ± 0.8 million birds and was 43 percent above the long-term average (1955–2011). Estimated mallard (*Anas platyrhynchos*) abundance was 10.6 ± 0.3 million birds, which was 15 percent above the 2011 estimate of 9.2 ± 0.3 million birds and 40 percent above the long-term average. Estimated abundance of gadwall (*A. strepera*; 3.6 ± 0.2

million) was similar to the 2011 estimate and 96 percent above the long-term average. Estimated abundance of American wigeon (*A. americana*; 2.1 ± 0.1 million) was similar to the 2011 estimate and 17 percent below the long-term average. The estimated abundance of green-winged teal (*A. crecca*) was 3.5 ± 0.2 million, which was 20 percent above the 2011 estimate and 74 percent above their long-term average. The estimate of blue-winged teal abundance (*A. discors*) was 9.2 ± 0.4 million, which was similar to the 2011 estimate and 94 percent above their long-term average. The estimate for northern pintails (*A. acuta*; 3.5 ± 0.2 million) was 22 percent below the 2011 estimate, and 14 percent below the long-term average. The northern shoveler estimate (*A. clypeata*) was 5.0 ± 0.3 million, which was similar to the 2011 estimate and 111 percent above the long-term average. Redhead abundance (*Aythya americana*; 1.3 ± 0.1 million) was similar to the 2011 estimate and 89 percent above the long-term average. The canvasback estimate (*A. valisineria*; 0.7 ± 0.05 million) was similar to the 2011 estimate and 33 percent above the long-term average. Estimated abundance of scaup (*A. affinis* and *A. marila* combined; 5.2 ± 0.3 million) was 21 percent above the 2011 estimate and similar to the long-term average.

The eastern survey area was re-stratified in 2005, and is now composed of strata 51–72. Estimated abundance of mallards in the eastern survey area was 0.4 ± 0.1 million, which was similar to the 2011 estimate and the long-term average (1990–2011). Abundance estimates of green-winged teal, ring-necked duck (*A. collaris*), goldeneyes (common [*Bucephala clangula*] and Barrow's [*B. islandica*]), and mergansers (red-breasted [*Mergus serrator*], common [*M. merganser*], and hooded [*Lophodytes cucullatus*]) were all similar to their 2011 estimates and long-term averages. The American black duck (*Anas rubripes*) estimate was 0.6 ± 0.04 million, which was 11 percent higher than the 2011 estimate and similar to the long-term average.

Fall Flight Estimate

The mid-continent mallard population is composed of mallards from the traditional survey area (revised in 2008 to exclude Alaska mallards), Michigan, Minnesota, and Wisconsin, and was estimated to be 12.7 ± 1.2 million birds. This was similar to the 2011 estimate of 11.9 ± 1.1 million in 2010.

See section 1.A. Harvest Strategy Considerations for further discussion of the implications of this information for

this year's selection of the appropriate hunting regulations.

Status of Geese and Swans

We provide information on the population status and productivity of North American Canada geese (*Branta canadensis*), brant (*B. bernicla*), snow geese (*Chen caerulescens*), Ross's geese (*C. rossii*), emperor geese (*C. canagica*), white-fronted geese (*Anser albifrons*), and tundra swans (*Cygnus columbianus*). Production of arctic-nesting geese depends heavily upon the timing of snow and ice melt, and on spring and early summer temperatures. In 2012, snowmelt timing was average or earlier than average throughout most of the important goose breeding areas. Conditions throughout Alaska and northwestern Canada were good. The exception was the Yukon-Kuskokwim Delta, where spring phenology was later than average, and flooding ensued when ice blockages trapped snowmelt. In addition, flooding on Southampton Island caused near-total nesting failure of the geese breeding there. Gosling production of Canada goose populations that migrate to the Atlantic and Mississippi Flyways should generally be average in 2012. In the central Arctic, phenology was earlier than average and earlier than last year, so above-average production of snow and Ross's geese and Mid-continent white-fronted geese nesting in the Queen Maud Gulf Sanctuary was expected. Pacific Flyway white-fronted geese, brant, and Canada geese nesting in the central Arctic should benefit as well. Indices of wetland abundance in the Canadian and U.S. prairies in 2012 fell dramatically from last year's record highs. However, early spring temperatures were warm throughout most of the United States, so the resulting early nest initiations should have increased brood survival despite poorer wetland conditions. Breeding populations of most temperate-nesting geese were at or near record highs in 2012, despite efforts to reduce or stabilize them. Production of temperate-nesting Canada geese from most of their North American range is expected to be above-average in 2012.

Waterfowl Harvest and Hunter Activity

National surveys of migratory bird hunters were conducted during the 2010 and 2011 hunting seasons. About 1.1 million waterfowl hunters harvested 14,796,700 (± 4 percent) ducks and 3,169,900 (± 5 percent) geese in 2010, and almost 1.2 million waterfowl hunters harvested 15,880,900 (± 6 percent) ducks and 2,868,500 (± 5 percent) geese in 2011. Mallard, green-winged teal, gadwall, wood duck, and

blue-winged/cinnamon teal were the five most-harvested duck species in the United States, and Canada goose was the predominant species in the goose harvest. Coot hunters (about 50,500 in 2010 and 46,200 in 2011) harvested 302,600 (± 50 percent) coots in 2010 and 416,400 (± 36 percent) in 2011.

Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the April 17, 2012, **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the May 17, 2012, **Federal Register**, discussed the regulatory alternatives for the 2012–13 duck hunting season. Late-season comments are summarized below and numbered in the order used in the April 17 and May 17 **Federal Register** documents. We have included only the numbered items pertaining to late-season issues for which we received written comments. Consequently, the issues do not follow in successive numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 17 and May 17, 2012, **Federal Register** documents.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Atlantic, Central, and Pacific Flyway

Councils and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended the adoption of the “liberal” regulatory alternative.

Service Response: We continue to use adaptive harvest management (AHM) protocols that allow hunting regulations to vary among Flyways in a manner that recognizes each Flyway's unique breeding-ground derivation of mallards. In 2008, we described and adopted a protocol for regulatory decision-making for the newly defined stock of western mallards (73 FR 43290; July 24, 2008). For the 2012 hunting season, we continue to believe that the prescribed regulatory choice for the Pacific Flyway should be based on the status of this western mallard breeding stock, while the regulatory choice for the Mississippi and Central Flyways should depend on the status of the recently redefined mid-continent mallard stock. We also recommend that the regulatory choice for the Atlantic Flyway continue to depend on the status of eastern mallards.

For the 2012 hunting season, we are continuing to consider the same regulatory alternatives as those used last year. The nature of the “restrictive,” “moderate,” and “liberal” alternatives has remained essentially unchanged since 1997, except that extended framework dates have been offered in the “moderate” and “liberal” regulatory alternatives since 2002. Also, in 2003, we agreed to place a constraint on closed seasons in the Mississippi and Central Flyways whenever the midcontinent mallard breeding-population size (as defined prior to 2008; traditional survey area plus Minnesota, Michigan, and Wisconsin) was ≥ 5.5 million.

Optimal AHM strategies for the 2012–13 hunting season were calculated using: (1) Harvest-management objectives specific to each mallard stock; (2) the 2012 regulatory alternatives; and (3) current population models and associated weights for midcontinent, western, and eastern mallards. Based on this year's survey results of 10.96 million midcontinent mallards (traditional survey area minus Alaska plus Minnesota, Wisconsin, and Michigan), 3.89 million ponds in Prairie Canada, 983,842 western mallards (478,259 and 505,583 respectively in California-Oregon and Alaska) and 837,642 eastern mallards (strata 51–54, 56 and the northeastern United States), the prescribed regulatory choice for all four Flyways is the “liberal” alternative.

Therefore, we concur with the recommendations of the Atlantic, Mississippi, Central, and Pacific Flyway

Councils regarding selection of the “liberal” regulatory alternative and propose to adopt the “liberal” regulatory alternative, as described in the May 17, 2012, **Federal Register**.

D. Special Seasons/Species Management

i. Special Teal Seasons

Council Recommendations: The Mississippi Flyway Council recommends that if the teal harvest assessment concludes that teal populations can sustain harvests beyond the harvest incurred during regular duck seasons and the Service offers States special teal harvest opportunities outside the regular duck seasons, then Iowa, Michigan, Minnesota, and Wisconsin should be offered the same special teal harvest opportunities that are offered to other States in the Mississippi Flyway.

Service Response: We recognize the long-standing interest by production States for additional teal harvest opportunities. In 2009, the Service and Flyway Councils formed a working group to assess the harvest potential of each of the three teal species. A report from that working group is scheduled for completion in January 2013. We have previously decided not to entertain any changes to special September teal seasons and special September duck seasons until this assessment is completed (74 FR 43009). If additional harvest opportunity is warranted, we are willing to work with the Flyways to explore how that opportunity may be provided. We note that any potential changes to special September teal seasons would likely require further technical evaluation. We are willing to work with the Flyway Councils to collaboratively develop the evaluation framework.

iii. Black Ducks

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended that the Service adopt the International Black Duck AHM Strategy for implementation in 2013.

Service Response: In 2008, U.S. and Canadian waterfowl managers developed an interim harvest strategy to be employed by both countries until a formal strategy based on the principles of AHM is completed. We detailed this interim strategy in the July 24, 2008, **Federal Register** (73 FR 43290). The interim harvest strategy is prescriptive, in that it calls for no substantive changes in hunting regulations unless the black duck breeding population, averaged over the most recent 3 years,

exceeds or falls below the long-term average breeding population by 15 percent or more. The strategy is designed to share the black duck harvest equally between the two countries; however, recognizing incomplete control of harvest through regulations, it will allow realized harvest in either country to vary between 40 and 60 percent.

Each year in November, Canada publishes its proposed migratory bird hunting regulations for the upcoming hunting season. Thus, last fall the Canadian Wildlife Service (CWS) used the interim strategy to establish its proposed black duck regulations for the 2012–13 season, based on the most current data available at that time: breeding population estimates for 2009, 2010, and 2011, and an assessment of parity based on harvest estimates for the 2006–10 hunting seasons. Although updates of both breeding population estimates and harvest estimates are now available, the United States will base its 2012–13 black duck regulations on the same data CWS used, to ensure comparable application of the strategy. The long-term (1998–2007) breeding population mean estimate is 932,146, and the 2009–11, 3-year running mean estimate is 851,667, only 9 percent less than the 1998–2007 average. From 2006–10, 44 percent of the black duck harvest occurred in Canada and 56 percent in the United States; this falls within the accepted parity bounds of 40 and 60 percent. Based on these estimates, no restriction or liberalization of black duck harvest is warranted this year.

As for the Councils' recommendations that we adopt the International Black Duck AHM Strategy for implementation in 2013, we concur. The formal strategy is the result of 14 years of technical and policy decisions developed and agreed upon by both Canadian and U. S. agencies and waterfowl managers. The strategy will clarify what harvest levels each country will manage for and will reduce conflicts over country-specific regulatory policies. Further, the strategy will allow for attainment of fundamental objectives of black duck management: resource conservation, perpetuation of hunting tradition, and equitable access to the black duck resource between Canada and the United States while accommodating the fundamental sources of uncertainty, partial controllability and observability, structural uncertainty, and environmental variation. The underlying model performance will be assessed annually, with a comprehensive evaluation of the entire strategy (objectives and model set) in 6

years. A copy of the strategy is available at the address indicated under **FOR FURTHER INFORMATION CONTACT**, or on <http://www.regulations.gov>, or from our Web site at <http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#BlackDucks>.

iv. Canvasbacks

Council Recommendations: The Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended a full season for canvasbacks with a 1-bird daily bag limit. Season lengths would be 60 days in the Atlantic and Mississippi Flyways, 74 days in the Central Flyway, and 107 days in the Pacific Flyway.

Service Response: Since 1994, we have followed a canvasback harvest strategy that if canvasback population status and production are sufficient to permit a harvest of one canvasback per day nationwide for the entire length of the regular duck season, while still attaining a projected spring population objective of 500,000 birds, the season on canvasbacks should be opened. A partial season would be permitted if the estimated allowable harvest was within the projected harvest for a shortened season. If neither of these conditions can be met, the harvest strategy calls for a closed season on canvasbacks nationwide. In 2008 (73 FR 43290; July 24, 2008), we announced our decision to modify the canvasback harvest strategy to incorporate the option for a 2-bird daily bag limit for canvasbacks when the predicted breeding population the subsequent year exceeds 725,000 birds.

This year's spring survey resulted in an estimate of 760,000 canvasbacks. This was 10 percent above the 2011 estimate of 692,000 canvasbacks and 33 percent above the 1955–2011 average. The estimate of ponds in Prairie Canada was 3.89 million, which was 21 percent below last year and 13 percent above the long-term average. Based on updated harvest predictions using data from recent hunting seasons, the canvasback harvest strategy predicts a 2013 canvasback population of 771,033 birds under a liberal duck season with a 1-bird daily bag limit and 711,428 with a 2-bird daily bag limit. Because the predicted 2013 population under the 1-bird daily bag limit is greater than 500,000, while the prediction under the 2-bird daily bag limit is less than 725,000, the canvasback harvest strategy stipulates a full canvasback season with a 1-bird daily bag limit for the upcoming season.

v. Pintails

Council Recommendations: The Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended a full season for pintails, consisting of a 2-bird daily bag limit and a 60-day season in the Atlantic and Mississippi Flyways, a 74-day season in the Central Flyway, and a 107-day season in the Pacific Flyway.

Service Response: The current derived pintail harvest strategy was adopted by the Service and Flyway Councils in 2010 (75 FR 44856; July 29, 2010). For this year, optimal regulatory strategies were calculated with: (1) An objective of maximizing long-term cumulative harvest, including a closed-season constraint of 1.75 million birds; (2) the regulatory alternatives and associated predicted harvest; and (3) current population models and their relative weights. Based on this year's survey results of 3.47 million pintails observed, a mean latitude of 54.0, and a latitude adjusted breeding population (BPOP) of 4.14 million birds, the optimal regulatory choice for all four Flyways is the "liberal" alternative with a 2-bird daily bag limit.

vi. Scaup

Council Recommendations: The Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended use of the "liberal" regulation package, consisting of a 60-day season with a 4-bird daily bag in the Atlantic and Mississippi Flyways, a 74-day season with a 6-bird daily bag limit in the Central Flyway, and an 107-day season with a 7-bird daily bag limit in the Pacific Flyway.

Service Response: In 2008, we adopted and implemented a new scaup harvest strategy (73 FR 43290 on July 24, 2008, and 73 FR 51124 on August 29, 2008) with initial "restrictive," "moderate," and "liberal" regulatory packages adopted for each Flyway. Further opportunity to revise these packages was afforded prior to the 2009–10 season and modifications by the Mississippi and Central Flyway Councils were endorsed by the Service in July 2009 (74 FR 36870; July 24, 2009).

The 2012 breeding population estimate for scaup is 5.24 million, up 21 percent from the 2011 estimate of 4.32 million. Total estimated scaup harvest for the 2011–12 season was 287,000 birds. Based on updated model parameter estimates, the optimal regulatory choice for scaup is the "liberal" package in all four Flyways.

xii. Other

Council Recommendations: The Central and Mississippi Flyway Councils recommended that the daily and possession bag limits for redheads during the 2012–13 duck hunting season be 3 and 6, respectively.

Service Response: While we recognize the desire to provide additional hunting opportunity for redheads, at this time we do not support the Councils' recommendations to increase the daily bag limit of redheads from 2 to 3 birds. As we indicated last year (76 FR 58682; September 21, 2011), we believe that as we have done with other species (such as canvasbacks, pintails, etc.), changes to redhead daily bag limits should only be considered with guidance from an agreed-upon harvest strategy that is supported by all four Flyway Councils and the Service. Thus, the Flyways should work collaboratively to develop a redhead harvest strategy, which would include: (1) Clearly defined and agreed-upon management objectives; (2) clearly defined regulatory alternatives; and (3) a model that can be used to predict population responses to harvest mortality. We note that if the Flyway Councils wish to implement a redhead harvest strategy for the 2013–14 season, a draft strategy must be available for review and discussion by the February 2013 SRC meeting, finalized by the Flyways Councils at their March 2013 meetings, and forwarded as a recommendation for SRC consideration at the early season SRC meeting (June 2013).

4. Canada Geese

B. Regular Seasons

Council Recommendations: The Atlantic Flyway Council recommended several changes to Canada goose season frameworks. More specifically, they recommended:

1. A 78-day season in Pennsylvania's Southern James Bay Population (SJB) Canada goose zone between the first Saturday in October and February 15, with a daily bag limit of 3 geese, and two season segments;
2. Increasing the season length in all Atlantic Population (AP) Canada goose harvest zones from 45 days to 50 days;
3. An earlier framework opening date of October 10 (from October 20) in the Lake Champlain Zone and other AP harvest zones in New England (Massachusetts and Connecticut);
4. A later framework closing date of February 5 (from January 31) in all AP harvest areas;
5. Framework opening and closing dates for the regular Canada goose hunting seasons in Florida, Georgia,

South Carolina, and West Virginia of October 1 and March 10, respectively, with up to three season segments; and

6. Modifications to the criteria for delineation and subsequent monitoring of Atlantic Flyway Resident Population (AFRP) Canada goose hunting zones for the 2012–15 hunting seasons. The Mississippi Flyway Council developed new framework regulations to replace most of the State-specific regulations used in the past. These new framework regulations were developed as part of the Flyway's efforts to move toward a more holistic and uniform approach to Canada goose harvest management across the Flyway and are consistent with the Flyway's harvest strategies for Mississippi Valley Population (MVP), SJB, Eastern Prairie Population (EPP), and Giant Canada geese. The resulting recommendations are the result of a Flyway-conducted comprehensive review of Canada goose population status during February 2012. In general, the recommended new frameworks allow States to select Canada goose seasons of up to 92 days, with a 2-bird daily bag limit, or a 78-day season with a 3-bird daily bag limit between the Saturday nearest September 24 and January 31 with some exceptions. More specifically, Alabama, Illinois, Kentucky, Louisiana, Mississippi, and Ohio propose to adopt the new Flyway-wide frameworks for Canada geese this year. Michigan, Minnesota, and Wisconsin have proposed exceptions to the generalized Flyway-wide framework, and these exceptions represent minor changes from last year. Arkansas, Iowa, Missouri, and Tennessee are considered exceptions to the proposed generalized Flyway-wide framework, but do not represent a change from last year.

The Central Flyway Council recommended increasing the Canada goose daily bag limit from 3 to 5 geese in the east-tier States.

The Pacific Flyway Council recommended several changes to dark goose season frameworks. More specifically, they recommended:

1. Allowing the season to be split into 3 segments in Washington's Area 4 and Oregon's Northwest Zone;
2. Extending the framework closing date to March 10 for dark geese in Oregon's Northwest General Zone for Oregon; and
3. Increasing the daily bag limit for dark geese to 6 per day in Oregon's South Coast Zone after the last Sunday in January.

Service Response: We agree with the Atlantic Flyway Council's recommendation concerning changes to the frameworks for Pennsylvania's SJB

zone. The Council's proposed change is consistent with the SJB Canada Goose Management Plan and consistent with the current Mississippi Flyway Council's proposal to modify Canada goose frameworks (including former SJB harvest zones). We also agree with the Council's recommendations concerning changes to AP goose frameworks. The Council notes that the 3-year mean (2010–12) AP breeding pair index of 190,500 is well above the threshold for "moderate" regulations (i.e., 150,000 pairs), which are intended not to exceed a mean harvest rate of 10 percent on adult AP geese. Since 2005, the estimated adult harvest rate for AP geese in the Atlantic Flyway (including Canada) with 45-day seasons in the United States has ranged from 5 to 9 percent and averaged 6.7 percent. Although 5 additional days of hunting provides a modest increase in harvest opportunity under "moderate" regulations, the Council predicts that the 5-day increase should result in a mean adult harvest rate of less than 8 percent, still below the AP harvest strategy allowance of a mean 10 percent adult harvest rate. Further, the proposed change is consistent with the Council's newly revised AP goose harvest strategy. Regarding the earlier framework opening dates for AP geese in New England, AP goose harvest in these areas only account for a very small percentage of the total AP goose harvest rate. The Council notes that the recommended later closing date of February 5 may allow some major AP harvest States to time hunting season closing dates, later when migrant harvest is likely to be buffered by overabundant AFRP Canada geese that have been pushed out of Canada and northern States by extensive ice and snow cover.

We also support the Atlantic Flyway Council's proposed framework date changes in Florida, Georgia, South Carolina, and West Virginia. Current Canada goose frameworks for these States do not provide opportunity for goose harvest or goose control activities during the month of October (the opening framework date in West Virginia is currently October 1). In most southern States, agricultural operations (including planting) still occurs in October, and providing October hunting opportunities could help reduce resident Canada goose impacts. The proposed framework closing date of March 10 is the same for other regular resident Canada goose seasons in Atlantic Flyway States and would aid in simplifying Flyway harvest regulations. Lastly, we support modification of the AFRP delineation criteria. The Council's

proposed modification is based on evaluations of AFRP seasons since 2002 and as band return data continue to accumulate, adjustments to existing AFRP zones and establishment of new zones will utilize these data to better address any migrant harvest concerns.

We support the Mississippi Flyway Council recommendations to move from State-specific frameworks to Flyway-wide Canada goose frameworks in the Flyway. In the past, the Mississippi Flyway has utilized State-specific frameworks to promulgate Canada goose hunting regulations. The proposed Flyway-wide general framework is intended to allow the maximum allowable number of Canada goose hunting days for any Mississippi Flyway State utilizing standard 15-day or longer early Canada goose seasons. In addition, several exceptions to the basic 92-day framework are recognized and serve to accommodate special State- and population-specific management needs. For example, States and Provinces that share harvest of the EPP Canada goose population recently revised regular season frameworks consistent with their management plan, and the Council's recommendation is intended to accommodate these regulations without imposing changes.

Management of Canada geese in the Mississippi Flyway is complicated by the need to balance potentially conflicting objectives for arctic, subarctic, and temperate (resident) breeding populations. Increased abundance of temperate-breeding Canada geese has caused conflicts with people and human activities, and regulations have been gradually liberalized to increase harvest of such birds to reduce those conflicts. Long-established management plans have been adopted for arctic and subarctic populations of Canada geese in the Mississippi Flyway to ensure that such populations remain within management goals. We believe that any increased harvest resulting from the proposed Flyway-wide frameworks (as well as exceptions to those frameworks) are compatible with those population management plans and the need to address increasing populations of temperate nesting Canada geese.

We do not support the Central Flyway Council's recommendation to increase the dark goose daily bag limit in the east-tier States from 3 to 5 geese. As we stated last year (76 FR 58682; September 21, 2011) and in 2010 (75 FR 58250; September 23, 2010), while we agree that the Flyway's proposed bag limit increase would likely result in an increased harvest of resident Canada geese, there are other Canada goose

populations that would also be subjected to additional harvest pressure, in particular the Tall Grass Prairie (TGP) population. We recognize the continuing problems posed by increasing numbers of resident Canada geese and that migrant populations of Canada geese in the Central Flyway are above objective levels. We also understand the Flyway's desire to provide as much hunting opportunity on these geese as possible, and we share the philosophy that hunting, not control permits, should be the primary tool used to manage populations of game birds. Thus, last year, we provided guidance on the progress that the Central and Mississippi Flyways needed to accomplish for us to consider allowing the proposed increase from 3 to 5 Canada geese during the regular goose seasons in Central Flyway East-Tier States. Specifically, we stated that progress needed to be made regarding revising the TGP management plan for this shared goose resource; at a minimum agreement between the two Flyways on management objectives must be reached. Based on the discussions at the recent July 25–26, 2012, SRC meetings, it is apparent that this dialogue just began, and progress on developing agreed-upon objectives and the plan revision is limited. Therefore, at this time, we do not support the Central Flyway's request to increase the bag limit. For our support of this effort in the future, the two Flyways must agree on objectives of the plan, including the desired size of the TGP population. We further note that the TGP management plan must be updated in the near future to deal with contemporary Canada goose issues. As the management plan is revised, we expect that other issues identified in the last two years will be addressed, including how plan actions might interact with measures to reduce conflicts with resident Canada geese and progress on monitoring migrant Canada goose populations in east-tier States.

We support all of the Pacific Flyway goose recommendations. The recommendations for 3-way split seasons in Washington and Oregon, and the recommendation to extend the framework date to March 10 in Oregon's Northwest Zone, are to simplify regulations and allow consistent regulations throughout the areas. Additionally, the Council notes that extending the framework dates may alleviate some depredation concerns between areas and in agricultural areas close to the zones' boundaries. Decreased movement of geese between

the zones may occur, which could decrease the concentration of depredation concerns in some areas in northwest Oregon. Increased bag limits in Oregon's South Coast Zone are targeted at Aleutian Canada geese, which are currently estimated at 134,708, more than twice their population objective.

C. Special Late Seasons

Council Recommendations: The Mississippi Flyway Council recommended changing Indiana's experimental late Canada goose season status to operational.

Service Response: At this time, we do not agree with the Council's recommendation to change the status of Indiana's late Canada goose season from experimental to operational. In 2007, Indiana initiated an experimental late Canada goose season in 30 counties to address increasing resident Canada goose populations. An evaluation report was submitted to the Flyway and Service in 2010. Although Statewide harvest of migrant Canada geese was within the allowed 20 percent criteria, take of migrant geese in the six-county Terre Haute region exceeded the criteria for September Canada goose seasons. Consequently, 24 counties were granted operational status while the six-county Terre Haute region was allowed to continue in an experimental status to allow for additional data collection. In 2010, we requested that Indiana collect additional information on the proportion of migrant Canada geese taken in the six-county Terre Haute region during the experimental late Canada goose season. Indiana has recently provided a report on that assessment, and we are reviewing those results in concert with our review of the appropriateness of the existing criteria that govern late Canada goose seasons. Therefore, we propose that the experimental late season remain experimental for an additional year without any further data collection requirements.

7. Snow and Ross's (Light) Geese

Council Recommendations: The Central Flyway Council recommended allowing an unlimited daily bag limit for light geese.

The Pacific Flyway Council recommended that the Idaho Department of Fish and Game (IDFG) continue trumpeter swan monitoring efforts once every 3 years during the late winter light goose season around American Falls Reservoir.

Service Response: We are investigating the legality of promulgating a hunting season without

a daily bag limit. However, even if it is legal, we are not prepared to support such a regulation at this time. We do not believe that recreational hunting will solve the problems associated with overabundant light geese, and do not want to provide the impression that further liberalizations of hunting regulations will solve these problems. Therefore, we do not support the Central Flyway Council's request to have a light goose season with no daily bag limit. Rather, we believe that technical and policy discussions should be held within appropriate forums to develop potential management options, and then make the decisions on the next steps to address issues identified in the recent Arctic Goose Joint Venture report. We believe there are existing bodies available to have these discussions.

Regarding the Pacific Flyway Council's recommendation to monitor trumpeter swans during the late winter light goose season around American Falls reservoir in Idaho, we support the continuation of monitoring efforts on a reduced basis. Since the inception of the late winter light goose hunt in 2010, Idaho has conducted annual ground surveys to evaluate the effects of light goose hunting on trumpeter swans. To date, no obvious negative trends in trumpeter swan use, distribution, or abundance have been documented. Further, Idaho has committed to continue monitoring and assessment efforts in the context of swan use of the American Falls Reservoir/Fort Hall Bottoms and the surrounding area. We note that this program was designed to identify annual changes in swan distribution and swan field-feeding during the late winter light goose hunt in order to help assess if changes in that hunt were warranted. Thus, given no compelling concerns or issues associated with trumpeter swans wintering in eastern Idaho, and no negative impacts associated with the current late winter light goose hunt, we see no reason to repeat monitoring efforts annually, but rather propose conducting the program every 3 years (i.e., 2015, 2018, etc.).

23. Other

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils recommended that the Service increase the possession limit from 2 times to 3 times the daily bag limit for all migratory game bird species and seasons except those that currently have possession limits of less than 2 times the daily bag limit, permit hunts for cranes and swans, or for overabundant species for which no current possession

limits are assigned, beginning in the 2013–14 season.

Service Response: In the September 23, 2010, **Federal Register** (75 FR 58250), we stated that we were generally supportive of the Flyways' interest in increasing the possession limits for migratory game birds and appreciated the discussions to frame this important issue. At that time, we also stated that we believed there were many unanswered questions regarding how this interest can be fully articulated in a proposal that satisfies the harvest management community, while fostering the support of the law enforcement community and informing the general hunting public. Thus, we proposed the creation of a cross-agency Working Group, chaired by the Service, and comprised of staff from the Service's Migratory Bird Program, State Wildlife Agency representatives, and Federal and State law enforcement staff, to begin to frame a recommendation that fully articulates a potential change in possession limits. This effort would include a description of the current status and use of possession limits, which populations and/or species/species groups should not be included in any proposed modification of possession limits, potential law enforcement issues, and a reasonable timeline for the implementation of any such proposed changes. The recommendations from the three Councils are one such out-growth of the efforts started in 2010 and we look forward to additional input from the Mississippi Flyway Council. We plan to fully discuss these recommendations with the Working Group and present preliminary recommendations at the February 2013 SRC meeting for further discussion. We would present any resulting proposal next spring, with proposed implementation during the 2013–14 hunting seasons.

Public Comments

The Department of the Interior's policy is, whenever possible, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgating final migratory game bird hunting regulations, we will consider all comments we receive. These comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept

comments sent by email or fax. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section. We will post all comments in their entirety—including your personal identifying information—on <http://www.regulations.gov>. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Room 4107, 4501 North Fairfax Drive, Arlington, VA 22203. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in the preambles of any final rules.

Required Determinations

Based on our most current data, we are affirming our required determinations made in the April 17 proposed rule; for descriptions of our actions to ensure compliance with the following statutes and Executive Orders, see our April 17, 2012, proposed rule (77 FR 23094):

- National Environmental Policy Act (NEPA) Consideration;
- Endangered Species Act Consideration;
- Regulatory Flexibility Act;
- Small Business Regulatory Enforcement Fairness Act;
- Paperwork Reduction Act;
- Unfunded Mandates Reform Act;
- Executive Orders 12630, 12866, 12988, 13132, 13175, and 13211.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2012–13 hunting

season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: August 9, 2012.

Michael J. Bean,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2012–13 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following proposals for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2012, and March 10, 2013. These frameworks are summarized below.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Permits: For some species of migratory birds, the Service authorizes the use of permits to regulate harvest or monitor their take by sport hunters, or both. In many cases (e.g., tundra swans, some sandhill crane populations), the Service determines the amount of harvest that may be taken during hunting seasons during its formal regulations-setting process, and the States then issue permits to hunters at levels predicted to result in the amount of take authorized by the Service. Thus, although issued by States, the permits would not be valid unless the Service approved such take in its regulations.

These Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take migratory birds at levels specified in the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferrable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway that lies west of the 100th meridian.

Definitions

For the purpose of hunting regulations listed below, the collective terms “dark” and “light” geese include the following species:

Dark geese: Canada geese, white-fronted geese, brant (except in California, Oregon, Washington, and the Atlantic Flyway), and all other goose species except light geese.

Light geese: Snow (including blue) geese and Ross’s geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Waterfowl Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited Statewide by State law, all Sundays are closed to all take of

migratory waterfowl (including mergansers and coots).

Special Youth Waterfowl Hunting Days

Outside Dates: States may select 2 days per duck-hunting zone, designated as “Youth Waterfowl Hunting Days,” in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, tundra swans, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day. Tundra swans may only be taken by participants possessing applicable tundra swan permits.

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 22) and the last Sunday in January (January 27).

Hunting Seasons and Duck Limits: 60 days. The daily bag limit is 6 ducks, including no more than 4 mallards (2 hens), 1 black duck, 2 pintails, 1 mottled duck, 1 fulvous whistling duck, 3 wood ducks, 2 redheads, 4 scaup, 1 canvasback, and 4 scoters.

Closures: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 2 of which may be hooded mergansers. In States that include mergansers in the duck bag

limit, the daily limit is the same as the duck bag limit, only two of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours should be the same as those selected for the Lake Champlain Zone of Vermont.

Connecticut River Zone, Vermont: The waterfowl seasons, limits, and shooting hours should be the same as those selected for the Inland Zone of New Hampshire.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, Virginia, and West Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Vermont may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. These seasons also include white-fronted geese. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late-season frameworks for resident geese, the framework closing date for AP goose seasons is January 14.

Connecticut:

North Atlantic Population (NAP) Zone: Between October 1 and January 31, a 60-day season may be held with a 2-bird daily bag limit.

Atlantic Population (AP) Zone: A 50-day season may be held between October 10 and February 5, with a 3-bird daily bag limit.

South Zone: A special season may be held between January 15 and February 15, with a 5-bird daily bag limit.

Resident Population (RP) Zone: An 80-day season may be held between October 1 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Delaware: A 50-day season may be held between November 15 and February 5, with a 2-bird daily bag limit.

Florida: An 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

Georgia: In specific areas, an 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

Maine: A 60-day season may be held Statewide between October 1 and January 31, with a 2-bird daily bag limit.

Maryland:

RP Zone: An 80-day season may be held between November 15 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

AP Zone: A 50-day season may be held between November 15 and February 5, with a 2-bird daily bag limit.

Massachusetts:

NAP Zone: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit.

Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 50-day season may be held between October 10 and February 5, with a 3-bird daily bag limit.

New Hampshire: A 60-day season may be held Statewide between October 1 and January 31, with a 2-bird daily bag limit.

New Jersey

Statewide: A 50-day season may be held between the fourth Saturday in October (October 27) and February 5, with a 3-bird daily bag limit.

Special Late Goose Season Area: A special season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York

NAP Zone: Between October 1 and January 31, a 60-day season may be held, with a 2-bird daily bag limit in the High Harvest areas; and between October 1 and February 15, a 70-day season may be held, with a 3-bird daily bag limit in the Low Harvest areas.

Special Late Goose Season Area: A special season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Suffolk County.

AP Zone: A 50-day season may be held between the fourth Saturday in October (October 27), except in the Lake Champlain Area where the opening date is October 10, and February 5, with a 3-bird daily bag limit.

Western Long Island RP Zone: A 107-day season may be held between the Saturday nearest September 24 (September 22) and March 10, with an 8-bird daily bag limit. The season may be split into 3 segments.

Rest of State RP Zone: An 80-day season may be held between the fourth Saturday in October (October 22) and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

North Carolina

SJBP Zone: A 70-day season may be held between October 1 and December 31, with a 5-bird daily bag limit.

RP Zone: An 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

Northeast Hunt Unit: A 7-day season may be held between the Saturday prior to December 25 (December 22) and January 31, with a 1-bird daily bag limit.

Pennsylvania

SJBP Zone: A 78-day season may be held between the first Saturday in October (October 6) and February 15, with a 3-bird daily bag limit.

RP Zone: An 80-day season may be held between the fourth Saturday in October (October 27) and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

AP Zone: A 50-day season may be held between the fourth Saturday in October (October 27) and February 5, with a 3-bird daily bag limit.

Rhode Island: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. A special late season may be held in designated areas from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina: In designated areas, an 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

Vermont

Lake Champlain Zone and Interior Zone: A 50-day season may be held between October 10 and February 5 with a 3-bird daily bag limit.

Connecticut River Zone: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit.

Virginia

SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 3-bird daily bag limit.

Additionally, a special late season may be held between January 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 50-day season may be held between November 15 and February 5, with a 2-bird daily bag limit.

RP Zone: An 80-day season may be held between November 15 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

West Virginia: An 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The

season may be split into 3 segments in each zone.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with a 25-bird daily bag limit and no possession limit. States may split their seasons into three segments.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between the Saturday nearest September 24 (September 22) and January 31, with a 2-bird daily bag limit. States may split their seasons into two segments.

Mississippi Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 22) and the last Sunday in January (January 27).

Hunting Seasons and Duck Limits: The season may not exceed 60 days, with a daily bag limit of 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 1 mottled duck, 1 black duck, 2 pintails, 3 wood ducks, 1 canvasback, 4 scaup, and 2 redheads.

Merganser Limits: The daily bag limit is 5, only 2 of which may be hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only 2 of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Arkansas and Mississippi, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days, with 20 geese daily between the Saturday nearest September 24 (September 22) and March 10; for white-fronted geese not to exceed 74 days with 2 geese daily or 88 days with 1 goose daily between the Saturday nearest September 24

(September 22) and the Sunday nearest February 15 (February 17); and for brant not to exceed 70 days, with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest September 24 (September 22) and January 31. There is no possession limit for light geese.

States may select seasons for Canada geese not to exceed 92 days with 2 geese daily or 78 days with 3 geese daily between the Saturday nearest September 24 (September 22) and January 31 with the following exceptions listed by State:

Arkansas: The season may extend to February 15.

Indiana

Late Canada Goose Season Areas:

(a) A special Canada goose season of up to 15 days may be held during February 1–15 in the Late Canada Goose Season Zone. During this special season, the daily bag limit cannot exceed 5 Canada geese.

(b) An experimental special Canada goose season of up to 15 days may be held during February 1–15 in the Experimental Late Canada Goose Zone. During this special season, the daily bag limit cannot exceed 5 Canada geese.

Iowa: The season for Canada geese may extend for 107 days. The daily bag limit is 3 Canada geese.

Michigan

The framework opening date for all geese is September 16.

Southern Michigan Late Canada Goose Season Zone: A 30-day special Canada goose season may be held between December 31 and February 15. The daily bag limit is 5 Canada geese.

Minnesota: The season for Canada geese may extend for 107 days. The daily bag limit is 3 Canada geese.

Missouri: The season for Canada geese may extend for 85 days. The daily bag limit is 3 Canada geese.

Tennessee: Northwest Zone—The season for Canada geese may extend to February 15.

Wisconsin

(a) Horicon Zone—The framework opening date for all geese is September 16. The season may not exceed 92 days. All Canada geese harvested must be tagged. The season limit will be 6 Canada geese per permittee.

(b) Exterior Zone—The framework opening date for all geese is September 16. The season may not exceed 92 days. The daily bag limit is 2 Canada geese.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 22) and the last Sunday in January (January 27).

Hunting Seasons:

(1) *High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian):* 97 days. The last 23 days must run consecutively and may start no earlier than the Saturday nearest December 10 (December 8).

(2) *Remainder of the Central Flyway:* 74 days.

Bag Limits: The daily bag limit is 6 ducks, with species and sex restrictions as follows: 5 mallards (no more than 2 of which may be females), 2 redheads, 3 wood ducks, 2 pintails, and 1 canvasback. In Texas, the daily bag limit on mottled ducks is 1, except that no mottled ducks may be taken during the first 5 days of the season.

Merganser Limits: The daily bag limit is 5 mergansers, only 2 of which may be hooded mergansers. In States that include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only two of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Colorado, Kansas (Low Plains portion), Montana, Nebraska, New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Colorado, Kansas, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest September 24 (September 22) and the Sunday nearest February 15 (February 17). For light geese, outside dates for seasons may be selected between the Saturday nearest September 24 (September 22) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions that are consistent with the late-winter snow goose hunting strategy

cooperatively developed by the Central Flyway Council and the Service are required.

Season Lengths and Limits:

Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 20 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 107 days with a daily bag limit of 3. Additionally, in the Eastern Goose Zone of Texas, an alternative season of 107 days with a daily bag limit of 1 Canada goose may be selected. For white-fronted geese, these States may select either a season of 74 days with a bag limit of 2 or an 88-day season with a bag limit of 1.

In Colorado, Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 95 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 5. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, Common Moorhens, and Purple Gallinules

Hunting Seasons and Duck Limits: Concurrent 107 days. The daily bag limit is 7 ducks and mergansers, including no more than 2 female mallards, 2 pintails, 1 canvasback, and 2 redheads.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot, Common Moorhen, and Purple Gallinule Limits: The daily bag and possession limits of coots, common moorhens, and purple gallinules are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest September 24 (September 22) and the last Sunday in January (January 27).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming may select hunting seasons by zones. Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming may split their seasons into two segments.

Colorado, Montana, and New Mexico may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits should be the same

as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits:

California, Oregon, and Washington:

Dark geese: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (September 29), and the last Sunday in January (January 27). The basic daily bag limit is 4 dark geese, except the dark goose bag limit does not include brant.

Light geese: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest October 1 (September 29) and March 10. The daily bag limit is 6 light geese.

Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming:

Dark geese: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 22) and the last Sunday in January (January 27). The basic daily bag limit is 4 dark geese.

Light geese: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 22), and March 10. The basic daily bag limit is 10 light geese.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Brant Season

Oregon may select a 16-day season, Washington a 16-day season, and California a 30-day season. Days must be consecutive. Washington and California may select hunting seasons by up to two zones. The daily bag limit is 2 brant and is in addition to dark goose limits. In Oregon and California, the brant season must end no later than December 15.

Arizona: The daily bag limit for dark geese is 3.

California

Northeastern Zone: The daily bag limit is 6 dark geese.

Balance-of-State Zone: A 107-day season may be selected with outside dates between the Saturday nearest October 1 (September 29) and March 10. Limits may not include more than 6

dark geese per day. In the Sacramento Valley Special Management Area, the season on white-fronted geese must end on or before December 28, and the daily bag limit should contain no more than 2 white-fronted geese. In the North Coast Special Management Area, a 107-day season may be selected, with outside dates between the Saturday nearest October 1 (September 29) and March 10. Hunting days that occur after the last Sunday in January should be concurrent with Oregon's South Coast Zone.

Idaho

Zone 3: Hunting days that occur after the last Sunday in January should be concurrent with Oregon's Malheur County Zone. Idaho will continue to monitor the snow goose hunt that occurs after the last Sunday in January in the American Falls Reservoir/Fort Hall Bottoms and surrounding areas at 3-year intervals.

Nevada: The daily bag limit for dark geese is 3.

New Mexico: The daily bag limit for dark geese is 3.

Oregon

Harney and Lake County Zone: For Lake County only, the daily dark goose bag limit may not include more than 1 white-fronted goose.

Klamath County Zone: A 107-day season may be selected, with outside dates between the Saturday nearest October 1 (September 29), and March 10. A 3-way split season may be selected. For hunting days after the last Sunday in January, the daily bag limit may not include Canada geese.

Malheur County Zone: The daily bag limit of light geese is 10. Hunting days that occur after the last Sunday in January should be concurrent with Idaho's Zone 2.

Northwest Zone: Outside dates are between the Saturday nearest October 1 (September 29) and March 10. A 3-way split season may be selected. The daily bag limit may not include more than 3 cackling or Aleutian geese.

Northwest Special Permit Zone: Outside dates are between the Saturday nearest October 1 (September 29) and March 10. The daily bag limit may not include more than 3 cackling or Aleutian geese and daily bag limit of light geese is 4.

South Coast Zone: A 107-day season may be selected, with outside dates between the Saturday nearest October 1 (September 29) and March 10. Hunting days that occur after the last Sunday in January should be concurrent with California's North Coast Special Management Area. A 3-way split season

may be selected. The daily bag limit of dark geese can increase to 6 geese after the last Sunday in January (January 27).

Utah: The daily bag limit for dark geese is 3.

Washington: The daily bag limit is 4 geese.

Area 1: Outside dates are between the Saturday nearest October 1 (September 29), and the last Sunday in January (January 27).

Areas 2A and 2B (Southwest Quota Zone): Except for designated areas, there will be no open season on Canada geese. See section on quota zones. In this area, the daily bag limit may include 3 cackling geese. In Southwest Quota Zone Area 2B (Pacific County), the daily bag limit may include 1 Aleutian goose.

Areas 4 and 5: A 107-day season may be selected for dark geese. A 3-way split season may be selected in Area 4.

Wyoming: The daily bag limit for dark geese is 3.

Quota Zones

Seasons on geese must end upon attainment of individual quotas of dusky geese allotted to the designated areas of Oregon (90) and Washington (45). The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days, and the established quota of dusky geese must not be exceeded. Hunting of geese in those designated areas will be only by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance with those regulations aimed at reducing the take of dusky geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close. In the designated areas of the Washington Southwest Quota Zone, a special late goose season may be held between the Saturday following the close of the general goose season and March 10. In the Northwest Special Permit Zone of Oregon, the framework closing date is March 10. Regular goose seasons may be split into 3 segments within the Oregon and Washington quota zones.

Swans

In portions of the Pacific Flyway (Montana, Nevada, and Utah), an open season for taking a limited number of swans may be selected. Permits will be issued by the State and will authorize each permittee to take no more than 1 swan per season with each permit. Nevada may issue up to 2 permits per hunter. Montana and Utah may only

issue 1 permit per hunter. Each State's season may open no earlier than the Saturday nearest October 1 (September 29). These seasons are also subject to the following conditions:

Montana: No more than 500 permits may be issued. The season must end no later than December 1. The State must implement a harvest-monitoring program to measure the species composition of the swan harvest and should use appropriate measures to maximize hunter compliance in reporting bill measurement and color information.

Utah: No more than 2,000 permits may be issued. During the swan season, no more than 10 trumpeter swans may be taken. The season must end no later than the second Sunday in December (December 9) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest. The Utah season remains subject to the terms of the Memorandum of Agreement entered into with the Service in August 2001, regarding harvest monitoring, season closure procedures, and education requirements to minimize the take of trumpeter swans during the swan season.

Nevada: No more than 650 permits may be issued. During the swan season, no more than 5 trumpeter swans may be taken. The season must end no later than the Sunday following January 1 (January 6) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In addition, the States of Utah and Nevada must implement a harvest-monitoring program to measure the species composition of the swan harvest. The harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. The States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination. Further, the States of Montana, Nevada, and Utah must achieve at least an 80-percent compliance rate, or subsequent permits will be reduced by 10 percent. All three States must provide to the Service by June 30, 2013, a report detailing harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas.

Tundra Swans

In portions of the Atlantic Flyway (North Carolina and Virginia) and the Central Flyway (North Dakota, South Dakota [east of the Missouri River], and that portion of Montana in the Central

Flyway), an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons are also subject to the following conditions:

In the Atlantic Flyway:

- The season may be 90 days, between October 1 and January 31.
- In North Carolina, no more than 5,000 permits may be issued.
- In Virginia, no more than 600 permits may be issued.

In the Central Flyway:

- The season may be 107 days, between the Saturday nearest October 1 (September 29) and January 31.
- In the Central Flyway portion of Montana, no more than 500 permits may be issued.
- In North Dakota, no more than 2,200 permits may be issued.
- In South Dakota, no more than 1,300 permits may be issued.

Area, Unit, and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I-95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire-Maine State line to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I-95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

Coastal Zone: That portion south of a line extending east from the Maine-New Brunswick border in Calais at the Route 1 Bridge; then south along Route 1 to the Maine-New Hampshire border in Kittery.

South Zone: Remainder of the State.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont State line on I-91 to MA 9, west on MA 9 to MA 10, south

on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut State line.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire State line on I-95 to U.S. 1, south on U.S. 1 to I-93, south on I-93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I-195, west to the Rhode Island State line; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Northern Zone: That portion of the State east and north of the Inland Zone beginning at the Jct. of Rte. 10 and Rte. 25A in Orford, east on Rte. 25A to Rte. 25 in Wentworth, southeast on Rte. 25 to Exit 26 of Rte. I-93 in Plymouth, south on Rte. I-93 to Rte. 3 at Exit 24 of Rte. I-93 in Ashland, northeast on Rte. 3 to Rte. 113 in Holderness, north on Rte. 113 to Rte. 113-A in Sandwich, north on Rte. 113-A to Rte. 113 in Tamworth, east on Rte. 113 to Rte. 16 in Chocorua, north on Rte. 16 to Rte. 302 in Conway, east on Rte. 302 to the Maine-New Hampshire border.

Inland Zone: That portion of the State south and west of the Northern Zone, west of the Coastal Zone, and includes the area of Vermont and New Hampshire as described for hunting reciprocity. A person holding a New Hampshire hunting license which allows the taking of migratory waterfowl or a person holding a Vermont resident hunting license which allows the taking of migratory waterfowl may take migratory waterfowl and coots from the following designated area of the Inland Zone: the State of Vermont east of Rte. I-91 at the Massachusetts border, north on Rte. I-91 to Rte. 2, north on Rte. 2 to Rte. 102, north on Rte. 102 to Rte. 253, and north on Rte. 253 to the border with Canada and the area of NH west of Rte. 63 at the MA border, north on Rte. 63 to Rte. 12, north on Rte. 12 to Rte. 12-A, north on Rte. 12A to Rte. 10, north on Rte. 10 to Rte. 135, north on Rte. 135 to Rte. 3, north on Rte. 3 to the intersection with the Connecticut River.

Coastal Zone: That portion of the State east of a line beginning at the Maine-New Hampshire border in Rollinsford, then extending to Rte. 4 west to the city of Dover, south to the intersection of Rte. 108, south along Rte. 108 through Madbury, Durham, and

Newmarket to the junction of Rte. 85 in Newfields, south to Rte. 101 in Exeter, east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south to the Massachusetts border.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York State line in Raritan Bay and extending west along the New York State line to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware State line in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania State line in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: That area east and north of a continuous line extending along U.S. 11 from the New York-Canada International boundary south to NY 9B, south along NY 9B to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont State line.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I-95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, and south along I-81 to the Pennsylvania State line.

Northeastern Zone: That area north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to I-81, south along I-81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to NY 22, north along NY 22 to Washington County Route 153, east along CR 153 to the New York-Vermont boundary, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I-80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I-80 to U.S. 220, Route 220 to I-180, I-180 to I-80, and I-80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to VT 78 at Swanton; VT 78 to VT 36; VT 36 to Maquam Bay on Lake Champlain; along and around the shoreline of Maquam Bay and Hog Island to VT 78 at the West Swanton Bridge; VT 78 to VT 2 in Alburg; VT 2 to the Richelieu River in Alburg; along the east shore of the Richelieu River to the Canadian border.

Interior Zone: That portion of Vermont east of the Lake Champlain Zone and west of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to US 2; east along US 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending west from the Indiana border along Peotone-Beecher Road to Illinois Route 50, south along Illinois Route 50 to Wilmington-Peotone Road, west along Wilmington-Peotone Road to Illinois Route 53, north along Illinois Route 53 to New River Road, northwest along New River Road to Interstate Highway 55, south along I-55 to Pine Bluff-Lorenzo Road, west along Pine Bluff-Lorenzo Road to Illinois Route 47, north along Illinois Route 47

to I-80, west along I-80 to I-39, south along I-39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State south of the North Duck Zone line to a line extending west from the Indiana border along I-70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 3, south along Illinois Route 3 to St. Leo's Road, south along St. Leo's Road to Modoc Road, west along Modoc Road to Modoc Ferry Road, southwest along Modoc Ferry Road to Levee Road, southeast along Levee Road to County Route 12 (Modoc Ferry entrance Road), south along County Route 12 to the Modoc Ferry route and southwest on the Modoc Ferry route across the Mississippi River to the Missouri border.

South Zone: That portion of the State south and east of a line extending west from the Indiana border along Interstate 70, south along U.S. Highway 45, to Illinois Route 13, west along Illinois Route 13 to Greenbriar Road, north on Greenbriar Road to Sycamore Road, west on Sycamore Road to N. Reed Station Road, south on N. Reed Station Road to Illinois Route 13, west along Illinois Route 13 to Illinois Route 127, south along Illinois Route 127 to State Forest Road (1025 N), west along State Forest Road to Illinois Route 3, north along Illinois Route 3 to the south bank of the Big Muddy River, west along the south bank of the Big Muddy River to the Mississippi River, west across the Mississippi River to the Missouri border.

South Central Zone: The remainder of the State between the south border of the Central Zone and the North border of the South Zone.

Indiana

North Zone: That part of Indiana north of a line extending east from the Illinois border along State Road 18 to U.S. 31; north along U.S. 31 to U.S. 24; east along U.S. 24 to Huntington; southeast along U.S. 224; south along State Road 5; and east along State Road 124 to the Ohio border.

Central Zone: That part of Indiana south of the North Zone boundary and north of the South Zone boundary.

South Zone: That part of Indiana south of a line extending east from the Illinois border along U.S. 40; south

along U.S. 41; east along State Road 58; south along State Road 37 to Bedford; and east along U.S. 50 to the Ohio border.

Iowa

North Zone: That portion of Iowa north of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 175, east along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, and along U.S. Highway 30 to the Illinois border.

Missouri River Zone: That portion of Iowa west of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 175, and west along State Highway 175 to the Iowa-Nebraska border.

South Zone: The remainder of Iowa.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

West: That portion of the State west and north of a line beginning at the Arkansas-Louisiana border on LA 3; south on LA 3 to Bossier City; then east along I-20 to Minden; then south along LA 7 to Ringgold; then east along LA 4 to Jonesboro; then south along US Hwy 167 to its junction with LA 106; west on LA 106 to Oakdale; then south on US Hwy 165 to junction with US Hwy 190 at Kinder; then west on US Hwy 190/LA 12 to the Texas state border.

East: That portion of the State east and north of a line beginning at the Arkansas-Louisiana border on LA 3; south on LA 3 to Bossier City; then east along I-20 to Minden; then south along LA 7 to Ringgold; then east along LA 4 to Jonesboro; then south along US Hwy 167 to Lafayette; then southeast along US Hwy 90 to the Mississippi State line.

Coastal: Remainder of the State.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road,

easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I-75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Minnesota

North Duck Zone: That portion of the State north of a line extending east from the North Dakota State line along State Highway 210 to State Highway 23 and east to State Highway 39 and east to the Wisconsin State line at the Oliver Bridge.

South Duck Zone: The portion of the State south of a line extending east from the South Dakota State line along U.S. Highway 212 to Interstate 494 and east to Interstate 94 and east to the Wisconsin State line.

Central Duck Zone: The remainder of the State.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border at Lock and Dam 25; west on Lincoln County Hwy. N to Mo. Hwy. 79; south on Mo. Hwy. 79 to Mo. Hwy. 47; west on Mo. Hwy. 47 to I-70; west on I-70 to the Kansas border.

Middle Zone: The remainder of Missouri not included in other zones.

South Zone: That portion of Missouri south of a line running west from the Illinois border on Mo. Hwy. 74 to Mo. Hwy. 25; south on Mo. Hwy. 25 to U.S. Hwy. 62; west on U.S. Hwy. 62 to Mo. Hwy. 53; north on Mo. Hwy. 53 to Mo. Hwy. 51; north on Mo. Hwy. 51 to U.S. Hwy. 60; west on U.S. Hwy. 60 to Mo. Hwy. 21; north on Mo. Hwy. 21 to Mo. Hwy. 72; west on Mo. Hwy. 72 to Mo. Hwy. 32; west on Mo. Hwy. 32 to U.S. Hwy. 65; north on U.S. Hwy. 65 to U.S. Hwy. 54; west on U.S. Hwy. 54 to U.S. Hwy. 71; south on U.S. Hwy. 71 to Jasper County Hwy. M; west on Jasper County Hwy. M to the Kansas border.

Ohio

Lake Erie Marsh Zone: Includes all land and water within the boundaries of the area bordered by Interstate 75 from the Ohio-Michigan line to Interstate 280 to Interstate 80 to the Erie-Lorain

County line extending to a line measuring two hundred (200) yards from the shoreline into the waters of Lake Erie and including the waters of Sandusky Bay and Maumee Bay.

North Zone: That portion of the State north of a line beginning at the Ohio-Indiana border and extending east along Interstate 70 to the Ohio-West Virginia border.

South Zone: The remainder of Ohio. Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota State line along U.S. Highway 10 into Portage County to County Highway HH, east on County Highway HH to State Highway 66 and then east on State Highway 66 to U.S. Highway 10, continuing east on U.S. Highway 10 to U.S. Highway 41, then north on U.S. Highway 41 to the Michigan State line.

Mississippi River Zone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

South Zone: The remainder of Wisconsin.

Central Flyway

Colorado (Central Flyway Portion)

Northeast Zone: All areas east of Interstate 25 and north of Interstate 70.

Southeast Zone: All areas east of Interstate 25 and south of Interstate 70, and all of El Paso, Pueblo, Huerfano, and Las Animas counties.

Mountain/Foothills Zone: All areas west of Interstate 25 and east of the Continental Divide, except El Paso, Pueblo, Huerfano, and Las Animas counties.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Early Zone: That part of Kansas bounded by a line from the Nebraska-Kansas State line south on K-128 to its junction with US-36, then east on US-36 to its junction with K-199, then south on K-199 to its junction with Republic County 30 Rd, then south on Republic County 30 Rd to its junction with K-148, then east on K-148 to its

junction with Republic County 50 Rd, then south on Republic County 50 Rd to its junction with Cloud County 40th Rd, then south on Cloud County 40th Rd to its junction with K-9, then west on K-9 to its junction with US-24, then west on US-24 to its junction with US-281, then north on US-281 to its junction with US-36, then west on US-36 to its junction with US-183, then south on US-183 to its junction with US-24, then west on US-24 to its junction with K-18, then southeast on K-18 to its junction with US-183, then south on US-183 to its junction with K-4, then east on K-4 to its junction with I-135, then south on I-135 to its junction with K-61, then southwest on K-61 to McPherson County 14th Avenue, then south on McPherson County 14th Avenue to its junction with Arapaho Rd, then west on Arapaho Rd to its junction with K-61, then southwest on K-61 to its junction with K-96, then northwest on K-96 to its junction with US-56, then southwest on US-56 to its junction with K-19, then east on K-19 to its junction with US-281, then south on US-281 to its junction with US-54, then west on US-54 to its junction with US-183, then north on US-183 to its junction with US-56, then southwest on US-56 to its junction with Ford County Rd 126, then south on Ford County Rd 126 to its junction with US-400, then northwest on US-400 to its junction with US-283, then north on US-283 to its junction with the Nebraska-Kansas State line, then east along the Nebraska-Kansas State line to its junction with K-128.

Late Zone: That part of Kansas bounded by a line from the Nebraska-Kansas State line south on K-128 to its junction with US-36, then east on US-36 to its junction with K-199, then south on K-199 to its junction with Republic County 30 Rd, then south on Republic County 30 Rd to its junction with K-148, then east on K-148 to its junction with Republic County 50 Rd, then south on Republic County 50 Rd to its junction with Cloud County 40th Rd, then south on Cloud County 40th Rd to its junction with K-9, then west on K-9 to its junction with US-24, then west on US-24 to its junction with US-281, then north on US-281 to its junction with US-36, then west on US-36 to its junction with US-183, then south on US-183 to its junction with US-24, then west on US-24 to its junction with K-18, then southeast on K-18 to its junction with US-183, then south on US-183 to its junction with K-4, then east on K-4 to its junction with I-135, then south on I-135 to its junction with K-61, then southwest on K-61 to 14th

Avenue, then south on 14th Avenue to its junction with Arapaho Rd, then west on Arapaho Rd to its junction with K-61, then southwest on K-61 to its junction with K-96, then northwest on K-96 to its junction with US-56, then southwest on US-56 to its junction with K-19, then east on K-19 to its junction with US-281, then south on US-281 to its junction with US-54, then west on US-54 to its junction with US-183, then north on US-183 to its junction with US-56, then southwest on US-56 to its junction with Ford County Rd 126, then south on Ford County Rd 126 to its junction with US-400, then northwest on US-400 to its junction with US-283, then south on US-283 to its junction with the Oklahoma-Kansas State line, then east along the Oklahoma-Kansas State line to its junction with US-77, then north on US-77 to its junction with Butler County, NE 150th Street, then east on Butler County, NE 150th Street to its junction with US-35, then northeast on US-35 to its junction with K-68, then east on K-68 to the Kansas-Missouri State line, then north along the Kansas-Missouri State line to its junction with the Nebraska State line, then west along the Kansas-Nebraska State line to its junction with K-128.

Southeast Zone: That part of Kansas bounded by a line from the Missouri-Kansas State line west on K-68 to its junction with US-35, then southwest on US-35 to its junction with Butler County, NE 150th Street, then west on NE 150th Street until its junction with K-77, then south on K-77 to the Oklahoma-Kansas State line, then east along the Kansas-Oklahoma State line to its junction with the Missouri State line, then north along the Kansas-Missouri State line to its junction with K-68.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska

High Plains—That portion of Nebraska lying west of a line beginning at the South Dakota-Nebraska border on U.S. Hwy. 183; south on U.S. Hwy. 183 to U.S. Hwy. 20; west on U.S. Hwy. 20 to NE Hwy. 7; south on NE Hwy. 7 to NE Hwy. 91; southwest on NE Hwy. 91 to NE Hwy. 2; southeast on NE Hwy. 2 to NE Hwy. 92; west on NE Hwy. 92 to NE Hwy. 40; south on NE Hwy. 40 to NE Hwy. 47; south on NE Hwy. 47 to

NE Hwy. 23; east on NE Hwy. 23 to U.S. Hwy. 283; and south on U.S. Hwy. 283 to the Kansas-Nebraska border.

Zone 1—Area bounded by designated Federal and State highways and political boundaries beginning at the South Dakota-Nebraska border west of NE Hwy. 26E Spur and north of NE Hwy. 12; those portions of Dixon, Cedar and Knox Counties north of NE Hwy. 12; that portion of Keya Paha County east of U.S. Hwy. 183; and all of Boyd County. Both banks of the Niobrara River in Keya Paha and Boyd counties east of U.S. Hwy. 183 shall be included in Zone 1.

Zone 2—The area south of Zone 1 and north of Zone 3.

Zone 3—Area bounded by designated Federal and State highways, County Roads, and political boundaries beginning at the Wyoming-Nebraska border at the intersection of the Interstate Canal; east along northern borders of Scotts Bluff and Morrill Counties to Broadwater Road; south to Morrill County Rd 94; east to County Rd 135; south to County Rd 88; southeast to County Rd 151; south to County Rd 80; east to County Rd 161; south to County Rd 76; east to County Rd 165; south to County Rd 167; south to U.S. Hwy. 26; east to County Rd 171; north to County Rd 68; east to County Rd 183; south to County Rd 64; east to County Rd 189; north to County Rd 70; east to County Rd 201; south to County Rd 60A; east to County Rd 203; south to County Rd 52; east to Keith County Line; east along the northern boundaries of Keith and Lincoln Counties to NE Hwy. 97; south to U.S. Hwy 83; south to E Hall School Rd; east to N Airport Road; south to U.S. Hwy. 30; east to Merrick County Rd 13; north to County Rd O; east to NE Hwy. 14; north to NE Hwy. 52; west and north to NE Hwy. 91; west to U.S. Hwy. 281; south to NE Hwy. 22; west to NE Hwy. 11; northwest to NE Hwy. 91; west to U.S. Hwy. 183; south to Round Valley Rd; west to Sargent River Rd; west to Sargent Rd; west to Milburn Rd; north to Blaine County Line; east to Loup County Line; north to NE Hwy. 91; west to North Loup Spur Rd; north to North Loup River Rd; east to Pleasant Valley/Worth Rd; east to Loup County Line; north to Loup-Brown county line; east along northern boundaries of Loup and Garfield Counties to Cedar River Road; south to NE Hwy. 70; east to U.S. Hwy. 281; north to NE Hwy. 70; east to NE Hwy. 14; south to NE Hwy. 39; southeast to NE Hwy. 22; east to U.S. Hwy. 81; southeast to U.S. Hwy. 30; east to U.S. Hwy. 75; north to the Washington County line; east to the Iowa-Nebraska border; south to the

Missouri-Nebraska border; south to Kansas-Nebraska border; west along Kansas-Nebraska border to Colorado-Nebraska border; north and west to Wyoming-Nebraska border; north to intersection of Interstate Canal; and excluding that area in Zone 4.

Zone 4—Area encompassed by designated Federal and State highways and County Roads beginning at the intersection of NE Hwy. 8 and U.S. Hwy. 75; north to U.S. Hwy. 136; east to the intersection of U.S. Hwy. 136 and the Steamboat Trace (Trace); north along the Trace to the intersection with Federal Levee R-562; north along Federal Levee R-562 to the intersection with the Trace; north along the Trace/Burlington Northern Railroad right-of-way to NE Hwy. 2; west to U.S. Hwy. 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north to NE Hwy. 66; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to NE Hwy. Spur 12F; south to Butler County Rd 30; east to County Rd X; south to County Rd 27; west to County Rd W; south to County Rd 26; east to County Rd X; south to County Rd 21 (Seward County Line); west to NE Hwy. 15; north to County Rd 34; west to County Rd J; south to NE Hwy. 92; west to U.S. Hwy. 81; south to NE Hwy. 66; west to Polk County Rd C; north to NE Hwy. 92; west to U.S. Hwy. 30; west to Merrick County Rd 17; south to Hordlake Road; southeast to Prairie Island Road; southeast to Hamilton County Rd T; south to NE Hwy. 66; west to NE Hwy. 14; south to County Rd 22; west to County Rd M; south to County Rd 21; west to County Rd K; south to U.S. Hwy. 34; west to NE Hwy. 2; south to U.S. Hwy. I-80; west to Gunbarrel Rd (Hall/Hamilton county line); south to Giltner Rd; west to U.S. Hwy. 281; south to U.S. Hwy. 34; west to NE Hwy. 10; north to Kearney County Rd R and Phelps County Rd 742; west to U.S. Hwy. 283; south to U.S. Hwy 34; east to U.S. Hwy. 136; east to U.S. Hwy. 183; north to NE Hwy. 4; east to NE Hwy. 10; south to U.S. Hwy. 136; east to NE Hwy. 14; south to NE Hwy. 8; east to U.S. Hwy. 81; north to NE Hwy. 4; east to NE Hwy. 15; south to U.S. Hwy. 136; east to NE Hwy. 103; south to NE Hwy. 8; east to U.S. Hwy. 75.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I-40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains Unit: That portion of the State south and west of a line from the South Dakota State line along U.S. 83

and I-94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains Unit: The remainder of North Dakota.

Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas State line along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I-40, east along I-40 to U.S. 177, north along U.S. 177 to OK 33, east along OK 33 to OK 18, north along OK 18 to OK 51, west along OK 51 to I-35, north along I-35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas State line.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains Zone: That portion of the State west of a line beginning at the North Dakota State line and extending south along U.S. 83 to U.S. 14, east on U.S. 14 to Blunt, south on the Blunt-Canning Rd to SD 34, east and south on SD 34 to SD 50 at Lee's Corner, south on SD 50 to I-90, east on I-90 to SD 50, south on SD 50 to SD 44, west on SD 44 across the Platte-Winner bridge to SD 47, south on SD 47 to U.S. 18, east on U.S. 18 to SD 47, south on SD 47 to the Nebraska State line.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along U.S. 212 to the Minnesota State line.

South Zone: That portion of Gregory County east of SD 47 and south of SD 44; Charles Mix County south of SD 44 to the Douglas County line; south on SD 50 to Geddes; east on the Geddes Highway to U.S. 281; south on U.S. 281 and U.S. 18 to SD 50; south and east on SD 50 to the Bon Homme County line; the Counties of Bon Homme, Yankton, and Clay south of SD 50; and Union County south and west of SD 50 and I-29.

Middle Zone: The remainder of South Dakota.

Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma State line along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I-10 to the Louisiana State line at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway Portion)

Zone C1: Big Horn, Converse, Goshen, Hot Springs, Natrona, Park, Platte, and Washakie Counties; and Fremont County excluding the portions west or south of the Continental Divide.

Zone C2: Campbell, Crook, Johnson, Niobrara, Sheridan, and Weston Counties.

Zone C3: Albany and Laramie Counties; and that portion of Carbon County east of the Continental Divide.

Pacific Flyway

Arizona

Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B-45.

North Zone: GMUs 1-5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines; west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I-10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I-15; east on I-15 to CA 127; north on CA 127 to the Nevada State line.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of State Highway 37 and State Highway 39.

Zone 2: Adams, Bear Lake, Benewah, Bingham within the Blackfoot Reservoir drainage, Blaine, Bonner, Bonneville, Boundary, Butte, Camas, Caribou except the Fort Hall Indian Reservation, Clark, Clearwater, Custer, Franklin, Fremont, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Oneida, Power County west of State Highway 37 and State Highway 39, Shoshone, Teton, and Valley Counties.

Zone 3: Ada, Boise, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln,

Minidoka, Owyhee, Payette, Twin Falls, and Washington Counties.

Nevada

Northeast Zone: All of Elko and White Pine Counties.

Northwest Zone: All of Carson City, Churchill, Douglas, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Nye, Pershing, Storey, and Washoe Counties.

South Zone: All of Clark and Lincoln County.

Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Uintah, Utah, Wasatch, and Weber Counties, and that part of Toole County north of I-80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Wyoming

Snake River Zone: Beginning at the south boundary of Yellowstone National Park and the Continental Divide; south along the Continental Divide to Union Pass and the Union Pass Road (U.S.F.S. Road 600); west and south along the Union Pass Road to U.S.F.S. Road 605; south along U.S.F.S. Road 605 to the Bridger-Teton National Forest boundary; along the national forest boundary to the Idaho State line; north along the Idaho State line to the south boundary of Yellowstone National Park; east along the Yellowstone National Park boundary to the Continental Divide.

Balance of State Zone: Balance of the Pacific Flyway in Wyoming outside the Snake River Zone.

Geese

Atlantic Flyway

Connecticut

AP Unit: Litchfield County and the portion of Hartford County west of a

line beginning at the Massachusetts border in Suffield and extending south along Route 159 to its intersection with Route 91 in Hartford, and then extending south along Route 91 to its intersection with the Hartford/Middlesex County line.

AFRP Unit: Starting at the intersection of I-95 and the Quinnipiac River, north on the Quinnipiac River to its intersection with I-91, north on I-91 to I-691, west on I-691 to the Hartford County line, and encompassing the rest of New Haven County and Fairfield County in its entirety.

NAP H-Unit: All of the rest of the State not included in the AP or AFRP descriptions above.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Maine

Same zones as for ducks.

Maryland

Resident Population (RP) Zone: Garrett, Allegany, Washington, Frederick, and Montgomery Counties; that portion of Prince George's County west of Route 3 and Route 301; that portion of Charles County west of Route 301 to the Virginia State line; and that portion of Carroll County west of Route 31 to the intersection of Route 97, and west of Route 97 to the Pennsylvania line.

AP Zone: Remainder of the State.

Massachusetts

NAP Zone: Central and Coastal Zones (see duck zones).

AP Zone: The Western Zone (see duck zones).

Special Late Season Area: The Central Zone and that portion of the Coastal Zone (see duck zones) that lies north of the Cape Cod Canal, north to the New Hampshire line.

New Hampshire

Same zones as for ducks.

New Jersey

North: That portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94; then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South: That portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

Lake Champlain Goose Area: The same as the Lake Champlain Waterfowl Hunting Zone, which is that area of New York State lying east and north of a continuous line extending along Route 11 from the New York-Canada International boundary south to Route 9B, south along Route 9B to Route 9, south along Route 9 to Route 22 south of Keeseville, south along Route 22 to the west shore of South Bay along and around the shoreline of South Bay to Route 22 on the east shore of South Bay, southeast along Route 22 to Route 4, northeast along Route 4 to the New York-Vermont boundary.

Northeast Goose Area: The same as the Northeastern Waterfowl Hunting Zone, which is that area of New York State lying north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate 81, south along Interstate Route 81 to Route 31, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Route 22 at Greenwich Junction, north along Route 22 to Washington County Route 153, east along CR 153 to the New York-Vermont boundary, exclusive of the Lake Champlain Zone.

East Central Goose Area: That area of New York State lying inside of a continuous line extending from Interstate Route 81 in Cicero, east along

Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, west along Route 146 to Albany County Route 252, northwest along Route 252 to Schenectady County Route 131, north along Route 131 to Route 7, west along Route 7 to Route 10 at Richmondville, south on Route 10 to Route 23 at Stamford, west along Route 23 to Route 7 in Oneonta, southwest along Route 7 to Route 79 to Interstate Route 88 near Harpursville, west along Route 88 to Interstate Route 81, north along Route 81 to the point of beginning.

West Central Goose Area: That area of New York State lying within a continuous line beginning at the point where the northerly extension of Route 269 (County Line Road on the Niagara-Orleans County boundary) meets the International boundary with Canada, south to the shore of Lake Ontario at the eastern boundary of Golden Hill State Park, south along the extension of Route 269 and Route 269 to Route 104 at Jeddo, west along Route 104 to Niagara County Route 271, south along Route 271 to Route 31E at Middleport, south along Route 31E to Route 31, west along Route 31 to Griswold Street, south along Griswold Street to Ditch Road, south along Ditch Road to Foot Road, south along Foot Road to the north bank of Tonawanda Creek, west along the north bank of Tonawanda Creek to Route 93, south along Route 93 to Route 5, east along Route 5 to Crittenden-Murrays Corners Road, south on Crittenden-Murrays Corners Road to the NYS Thruway, east along the Thruway 90 to Route 98 (at Thruway Exit 48) in Batavia, south along Route 98 to Route 20, east along Route 20 to Route 19 in Pavilion Center, south along Route 19 to

Route 63, southeast along Route 63 to Route 246, south along Route 246 to Route 39 in Perry, northeast along Route 39 to Route 20A, northeast along Route 20A to Route 20, east along Route 20 to Route 364 (near Canandaigua), south and east along Route 364 to Yates County Route 18 (Italy Valley Road), southwest along Route 18 to Yates County Route 34, east along Route 34 to Yates County Route 32, south along Route 32 to Steuben County Route 122, south along Route 122 to Route 53, south along Route 53 to Steuben County Route 74, east along Route 74 to Route 54A (near Pulteney), south along Route 54A to Steuben County Route 87, east along Route 87 to Steuben County Route 96, east along Route 96 to Steuben County Route 114, east along Route 114 to Schuyler County Route 23, east and southeast along Route 23 to Schuyler County Route 28, southeast along Route 28 to Route 409 at Watkins Glen, south along Route 409 to Route 14, south along Route 14 to Route 224 at Montour Falls, east along Route 224 to Route 228 in Odessa, north along Route 228 to Route 79 in Mecklenburg, east along Route 79 to Route 366 in Ithaca, northeast along Route 366 to Route 13, northeast along Route 13 to Interstate Route 81 in Cortland, north along Route 81 to the north shore of the Salmon River to the shore of Lake Ontario, extending generally northwest in a straight line to the nearest point of the International boundary with Canada, south and west along the International boundary to the point of beginning.

Hudson Valley Goose Area: That area of New York State lying within a continuous line extending from Route 4 at the New York–Vermont boundary, west and south along Route 4 to Route 149 at Fort Ann, west on Route 149 to Route 9, south along Route 9 to Interstate Route 87 (at Exit 20 in Glens Falls), south along Route 87 to Route 29, west along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along

Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, southeast along Route 146 to Main Street in Altamont, west along Main Street to Route 156, southeast along Route 156 to Albany County Route 307, southeast along Route 307 to Route 85A, southwest along Route 85A to Route 85, south along Route 85 to Route 443, southeast along Route 443 to Albany County Route 301 at Clarksville, southeast along Route 301 to Route 32, south along Route 32 to Route 23 at Cairo, west along Route 23 to Joseph Chadderdon Road, southeast along Joseph Chadderdon Road to Hearts Content Road (Greene County Route 31), southeast along Route 31 to Route 32, south along Route 32 to Greene County Route 23A, east along Route 23A to Interstate Route 87 (the NYS Thruway), south along Route 87 to Route 28 (Exit 19) near Kingston, northwest on Route 28 to Route 209, southwest on Route 209 to the New York–Pennsylvania boundary, southeast along the New York–Pennsylvania boundary to the New York–New Jersey boundary, southeast along the New York–New Jersey boundary to Route 210 near Greenwood Lake, northeast along Route 210 to Orange County Route 5, northeast along Orange County Route 5 to Route 105 in the Village of Monroe, east and north along Route 105 to Route 32, northeast along Route 32 to Orange County Route 107 (Quaker Avenue), east along Route 107 to Route 9W, north along Route 9W to the south bank of Moodna Creek, southeast along the south bank of Moodna Creek to the New Windsor–Cornwall town boundary, northeast along the New Windsor–Cornwall town boundary to the Orange–Dutchess County boundary (middle of the Hudson River), north along the county boundary to Interstate Route 84, east along Route 84 to the Dutchess–Putnam County boundary, east along the county boundary to the New York–Connecticut boundary, north along the New York–Connecticut boundary to the New York–Massachusetts boundary, north along the New York–Massachusetts boundary to the New York–Vermont boundary, north to the point of beginning.

Eastern Long Island Goose Area (NAP High Harvest Area): That area of Suffolk County lying east of a continuous line extending due south from the New York–Connecticut boundary to the northernmost end of Roanoke Avenue in the Town of Riverhead; then south on Roanoke Avenue (which becomes County Route 73) to State Route 25; then west on Route 25 to Peconic Avenue; then south on Peconic Avenue to

County Route (CR) 104 (Riverleigh Avenue); then south on CR 104 to CR 31 (Old Riverhead Road); then south on CR 31 to Oak Street; then south on Oak Street to Potunk Lane; then west on Stevens Lane; then south on Jessup Avenue (in Westhampton Beach) to Dune Road (CR 89); then due south to international waters.

Western Long Island Goose Area (RP Area): That area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York–Connecticut boundary to the northernmost end of the Sunken Meadow State Parkway; then south on the Sunken Meadow Parkway to the Sagtikos State Parkway; then south on the Sagtikos Parkway to the Robert Moses State Parkway; then south on the Robert Moses Parkway to its southernmost end; then due south to international waters.

Central Long Island Goose Area (NAP Low Harvest Area): That area of Suffolk County lying between the Western and Eastern Long Island Goose Areas, as defined above.

South Goose Area: The remainder of New York State, excluding New York City.

Special Late Canada Goose Area: That area of the Central Long Island Goose Area lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York–Connecticut boundary.

North Carolina

SJBP Hunt Zone: Includes the following Counties or portions of Counties: Anson, Cabarrus, Chatham, Davidson, Durham, Halifax (that portion east of NC 903), Montgomery (that portion west of NC 109), Northampton, Richmond (that portion south of NC 73 and west of US 220 and north of US 74), Rowan, Stanly, Union, and Wake.

RP Hunt Zone: Includes the following Counties or portions of Counties: Alamance, Alleghany, Alexander, Ashe, Avery, Beaufort, Bertie (that portion south and west of a line formed by NC 45 at the Washington Co. line to US 17 in Midway, US 17 in Midway to US 13 in Windsor, US 13 in Windsor to the Hertford Co. line), Bladen, Brunswick, Buncombe, Burke, Caldwell, Carteret, Caswell, Catawba, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford,

Halifax (that portion west of NC 903), Harnett, Haywood, Henderson, Hertford, Hoke, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mecklenburg, Mitchell, Montgomery (that portion that is east of NC 109), Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Randolph, Richmond (all of the county with exception of that portion that is south of NC 73 and west of US 220 and north of US 74), Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey.

Northeast Hunt Unit: Includes the following Counties or portions of Counties: Bertie (that portion north and east of a line formed by NC 45 at the Washington County line to US 17 in Midway, US 17 in Midway to US 13 in Windsor, US 13 in Windsor to the Hertford Co. line), Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania

Resident Canada Goose Zone: All of Pennsylvania except for SJBZ Zone and the area east of route SR 97 from the Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of US Route 30, south of US Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I-81, east of I-81 to intersection of I-80, and south of I-80 to the New Jersey State line.

SJBZ Zone: The area north of I-80 and west of I-79 including in the city of Erie west of Bay Front Parkway to and including the Lake Erie Duck zone (Lake Erie, Presque Isle, and the area within 150 yards of the Lake Erie Shoreline).

AP Zone: The area east of route SR 97 from Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of US Route 30, south of US Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I-81, east of I-81 to intersection of I-80, south of I-80 to New Jersey State line.

Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada Goose Area: Statewide except for Clarendon County, that portion of Orangeburg County north of SC Highway 6, and that portion of Berkeley County north of SC Highway 45 from the Orangeburg County line to the

junction of SC Highway 45 and State Road S-8-31 and that portion west of the Santee Dam.

Vermont

Same zones as for ducks.

Virginia

AP Zone: The area east and south of the following line—the Stafford County line from the Potomac River west to Interstate 95 at Fredericksburg, then south along Interstate 95 to Petersburg, then Route 460 (SE) to City of Suffolk, then south along Route 32 to the North Carolina line.

SJBZ Zone: The area to the west of the AP Zone boundary and east of the following line: the “Blue Ridge” (mountain spine) at the West Virginia–Virginia Border (Loudoun County–Clarke County line) south to Interstate 64 (the Blue Ridge line follows county borders along the western edge of Loudoun–Fauquier–Rappahannock–Madison–Greene–Albemarle and into Nelson Counties), then east along Interstate Rt. 64 to Route 15, then south along Rt. 15 to the North Carolina line.

RP Zone: The remainder of the State west of the SJBZ Zone.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBZ Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas

Northwest Zone: Baxter, Benton, Boone, Carroll, Conway, Crawford, Faulkner, Franklin, Johnson, Logan, Madison, Marion, Newton, Perry, Pope, Pulaski, Searcy, Sebastian, Scott, Van Buren, Washington, and Yell Counties.

Illinois

North Zone: That portion of the State north of a line extending west from the Indiana border along Interstate 80 to I-39, south along I-39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State south of the North Goose Zone line to a line extending west from the Indiana border along I-70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois

Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 3, south along Illinois Route 3 to St. Leo's Road, south along St. Leo's road to Modoc Road, west along Modoc Road to Modoc Ferry Road, southwest along Modoc Ferry Road to Levee Road, southeast along Levee Road to County Route 12 (Modoc Ferry entrance Road), south along County Route 12 to the Modoc Ferry route and southwest on the Modoc Ferry route across the Mississippi River to the Missouri border.

South Zone: Same zones as for ducks.

South Central Zone: Same zones as for ducks.

Indiana

Same zones as for ducks but in addition:

Special Canada Goose Seasons

Late Canada Goose Season Zone: That part of the State encompassed by the following Counties: Steuben, Lagrange, Elkhart, St. Joseph, La Porte, Starke, Marshall, Kosciusko, Noble, De Kalb, Allen, Whitley, Huntington, Wells, Adams, Boone, Hamilton, Madison, Hendricks, Marion, Hancock, Morgan, Johnson, and Shelby.

Experimental Late Canada Goose Season Zone: That part of the State encompassed by the following Counties: Vermillion, Parke, Vigo, Clay, Sullivan, and Greene.

Iowa

Same zones as for ducks.

Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee State line at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I-24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana State line.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Louisiana

Same zones as for ducks.

Michigan

(a) **North Zone**—Same as North duck zone.

(b) **Middle Zone**—Same as Middle duck zone.

(c) **South Zone**—Same as South duck zone.

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly along 46th Street to 109th Avenue, westerly along 109th Avenue to I-196 in Casco Township, then northerly along I-196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:
Southern Michigan Late Season
Canada Goose Zone: Same as the South Duck Zone excluding Tuscola/Huron Goose Management Unit (GMU), Allegan County GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota

Same zones as for ducks but in addition:

Rochester Goose Zone: That part of the State within the following described boundary:

Beginning at the intersection of State Trunk Highway (STH) 247 and County State Aid Highway (CSAH) 4, Wabasha County; thence along CSAH 4 to CSAH 10, Olmsted County; thence along CSAH 10 to CSAH 9, Olmsted County; thence along CSAH 9 to CSAH 22, Winona County; thence along CSAH 22 to STH 74; thence along STH 74 to STH 30; thence along STH 30 to CSAH 13, Dodge County; thence along CSAH 13 to U.S. Highway 14; thence along U.S. Highway 14 to STH 57; thence along STH 57 to

CSAH 24, Dodge County; thence along CSAH 24 to CSAH 13, Olmsted County; thence along CSAH 13 to U.S. Highway 52; thence along U.S. Highway 52 to CSAH 12, Olmsted County; thence along CSAH 12 to STH 247; thence along STH 247 to the point of beginning.

Missouri

Same zones as for ducks.

Ohio

Lake Erie Goose Zone: That portion of Ohio north of a line beginning at the Michigan border and extending south along Interstate 75 to Interstate 280, south on Interstate 280 to Interstate 80, and east on Interstate 80 to the Pennsylvania border.

North Zone: That portion of Ohio north of a line beginning at the Indiana border and extending east along Interstate 70 to the West Virginia border excluding the portion of Ohio within the Lake Erie Goose Zone.

South Zone: The remainder of Ohio.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion, and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama State line to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky State line.

Wisconsin

Same zones as for ducks but in addition:

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to Interstate Highway 39, southerly along Interstate Highway 39 to Interstate Highway 90/94, southerly along I-90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to

the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Exterior Zone: That portion of the State not included in the Horicon Zone.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwestly along the Green Bay Ship Channel to the Fox River.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All areas in Boulder, Larimer and Weld Counties from the Continental Divide east along the Wyoming border to U.S. 85, south on U.S. 85 to the Adams County line, and all lands in Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Gilpin, and Jefferson Counties.

North Park Area: Jackson County.

South Park and San Luis Valley Area: All of Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Rio Grande and Teller Counties, and those portions of Saguache, Mineral and Hinsdale Counties east of the Continental Divide.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: That portion of the State east of Interstate Highway 25.

Nebraska

Dark Geese

Niobrara Unit: That area contained within and bounded by the intersection of the South Dakota State line and the eastern Cherry County line, south along the Cherry County line to the Niobrara River, east to the Norden Road, south on the Norden Road to U.S. Hwy 20, east along U.S. Hwy 20 to NE Hwy 14, north along NE Hwy 14 to NE Hwy 59 and County Road 872, west along County

Road 872 to the Knox County Line, north along the Knox County Line to the South Dakota State line. Where the Niobrara River forms the boundary, both banks of the river are included in the Niobrara Unit.

East Unit: That area north and east of U.S. 81 at the Kansas-Nebraska State line, north to NE Hwy 91, east to U.S. 275, south to U.S. 77, south to NE 91, east to U.S. 30, east to Nebraska-Iowa State line.

Platte River Unit: That area north and west of U.S. 81 at the Kansas-Nebraska State line, north to NE Hwy 91, west along NE 91 to NE 11, north to the Holt County line, west along the northern border of Garfield, Loup, Blaine and Thomas Counties to the Hooker County line, south along the Thomas-Hooker County lines to the McPherson County line, east along the south border of Thomas County to the western line of Custer County, south along the Custer-Logan County line to NE 92, west to U.S. 83, north to NE 92, west to NE 61, south along NE 61 to NE 92, west along NE 92 to U.S. Hwy 26, south along U.S. Hwy 26 to Keith County Line, south along Keith County Line to the Colorado State line.

Panhandle Unit: That area north and west of Keith-Deuel County Line at the Nebraska-Colorado State line, north along the Keith County Line to U.S. Hwy 26, west to NE Hwy 92, east to NE Hwy 61, north along NE Hwy 61 to NE Hwy 2, west along NE 2 to the corner formed by Garden—Grant—Sheridan Counties, west along the north border of Garden, Morrill, and Scotts Bluff Counties to the intersection of the Interstate Canal, west to the Wyoming State line.

North—Central Unit: The remainder of the State.

Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and U.S. 30 at Grand Island, north and east on U.S. 30 to NE 14, south to NE 66, east to US 81, north to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia Counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

North Dakota

Missouri River Canada Goose Zone: The area within and bounded by a line starting where ND Hwy 6 crosses the South Dakota border; thence north on ND Hwy 6 to I-94; thence west on I-94 to ND Hwy 49; thence north on ND Hwy 49 to ND Hwy 200; thence north on Mercer County Rd. 21 to the section line between sections 8 and 9 (T146N-R87W); thence north on that section line to the southern shoreline to Lake Sakakawea; thence east along the southern shoreline (including Mallard Island) of Lake Sakakawea to US Hwy 83; thence south on US Hwy 83 to ND Hwy 200; thence east on ND Hwy 200 to ND Hwy 41; thence south on ND Hwy 41 to US Hwy 83; thence south on US Hwy 83 to I-94; thence east on I-94 to US Hwy 83; thence south on US Hwy 83 to the South Dakota border; thence west along the South Dakota border to ND Hwy 6.

Rest of State: Remainder of North Dakota.

South Dakota

Canada Geese

Unit 1: Remainder of South Dakota.

Unit 2: Gregory, Hughes, Lyman, Perkins, and Stanley Counties; that portion of Potter County west of US Highway 83; that portion of Sully County west of US Highway 83; that portion of Bon Homme, Brule, Buffalo, Charles Mix, and Hyde County south and west of a line beginning at the Hughes-Hyde County line on SD Highway 34, east to Lees Boulevard, southeast to SD 34, east 7 miles to 350th Avenue, south to I-90, south and east on SD Highway 50 to Geddes, east on 285th Street to US Highway 281, south on US Highway 281 to SD 50, east and south on SD 50 to the Bon Homme-Yankton County boundary; that portion of Fall River County east of SD Highway 71 and US Highway 385; that portion of Custer County east of SD Highway 79 and south of French Creek; that portion of Dewey County south of BIA Road 8, BIA Road 9, and the section of US 212 east of BIA Road 8 junction.

Unit 3: Bennett County.

Texas

Northeast Goose Zone: That portion of Texas lying east and north of a line beginning at the Texas-Oklahoma border at U.S. 81, then continuing south to Bowie and then southeasterly along U.S.

81 and U.S. 287 to I-35W and I-35 to the juncture with I-10 in San Antonio, then east on I-10 to the Texas-Louisiana border.

Southeast Goose Zone: That portion of Texas lying east and south of a line beginning at the International Toll Bridge at Laredo, then continuing north following I-35 to the juncture with I-10 in San Antonio, then easterly along I-10 to the Texas-Louisiana border.

West Goose Zone: The remainder of the State.

Wyoming (Central Flyway Portion)

Dark Geese

Zone C1: Converse, Hot Springs, Natrona, and Washakie Counties, and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Zone C2: Albany, Campbell, Crook, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties, and that portion of Carbon County east of the Continental Divide; that portion of Park County west of the Shoshone National Forest boundary, and that portion of Park County north of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Pacific Flyway

Arizona

North Zone: Game Management Units 1-5, those portions of Game Management Units 6 and 8 within Coconino County, and Game Management Units 7, 9, and 12A.

South Zone: Those portions of Game Management Units 6 and 8 in Yavapai County, and Game Management Units 10 and 12B-45.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of

Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I-10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I-15; east on I-15 to CA 127; north on CA 127 to the Nevada border.

Imperial County Special Management Area: The area bounded by a line

beginning at Highway 86 and the Navy Test Base Road; south on Highway 86 to the town of Westmoreland; continue through the town of Westmoreland to Route S26; east on Route S26 to Highway 115; north on Highway 115 to Weist Rd.; north on Weist Rd. to Flowing Wells Rd.; northeast on Flowing Wells Rd. to the Coachella Canal; northwest on the Coachella Canal to Drop 18; a straight line from Drop 18 to Frink Rd.; south on Frink Rd. to Highway 111; north on Highway 111 to Niland Marina Rd.; southwest on Niland Marina Rd. to the old Imperial County boat ramp and the water line of the Salton Sea; from the water line of the Salton Sea, a straight line across the Salton Sea to the Salinity Control Research Facility and the Navy Test Base Road; southwest on the Navy Test Base Road to the point of beginning.

Balance-of-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

North Coast Special Management Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area: That area bounded by a line beginning at Willows south on I-5 to Hahn Road; easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

Colorado (Pacific Flyway Portion)

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral, and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Adams, Bannock, Bear Lake, Benewah, Bingham north of State Highway 20 and east of the west bank of the Snake River and the American Falls Reservoir bluff, Blaine, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Clark, Clearwater, Custer, Franklin, Fremont, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Oneida, Power south of Interstate 86 and east of the west bank of the Snake River and the American Falls Reservoir bluff, Shoshone, Teton, and Valley Counties.

Zone 2: Ada, Boise, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln,

Minidoka, Owyhee, Payette, Twin Falls, and Washington Counties.

Zone 3: Bingham County south of State Highway 20 and west of the west bank of the Snake River and the American Falls Reservoir bluff and Power County north of Interstate 86 and west of the west bank of the Snake River and the American Falls Reservoir bluff.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada

Northeast Zone: All of Elko and White Pine Counties.

Northwest Zone: All of Carson City, Churchill, Douglas, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Nye, Pershing, Storey, and Washoe Counties.

South Zone: All of Clark and Lincoln County.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I-40.

South Zone: The Pacific Flyway portion of New Mexico located south of I-40.

Oregon

Southwest Zone: Those portions of Douglas, Coos, and Curry Counties east of Highway 101, and Josephine and Jackson Counties.

South Coast Zone: Those portions of Douglas, Coos, and Curry Counties west of Highway 101.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I-5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I-5; then south on I-5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to Milepost 19; then north to the intersection of the Benton and Lincoln County line; then north along the western boundary of Benton and Polk Counties to the southern boundary of Tillamook County; then west along the Tillamook County boundary to the Pacific Coast.

Lower Columbia/N. Willamette Valley Management Area: Those portions of Clatsop, Columbia, Multnomah, and

Washington Counties within the Northwest Special Permit Zone.

Tillamook County Management Area: All of Tillamook County. The following portion of the Tillamook County Management Area is closed to goose hunting beginning at the point where Old Woods Rd crosses the south shores of Horn Creek, north on Old Woods Rd to Sand Lake Rd at Woods, north on Sand Lake Rd to the intersection with McPhillips Dr., due west (~200 yards) from the intersection to the Pacific coastline, south on the Pacific coastline to Neskowin Creek, east along the north shores of Neskowin Creek and then Hawk Creek to Salem Ave, east on Salem Ave in Neskowin to Hawk Ave, east on Hawk Ave to Hwy 101, north on Hwy 101 to Resort Dr., north on Resort Dr. to a point due west of the south shores of Horn Creek at its confluence with the Nestucca River, due east (~80 yards) across the Nestucca River to the south shores of Horn Creek, east along the south shores of Horn Creek to the point of beginning.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone and all of Lincoln County.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney and Lake County Zone: All of Harney and Lake Counties.

Klamath County Zone: All of Klamath County.

Malheur County Zone: All of Malheur County.

Utah

Northern Utah Zone: All of Cache and Rich Counties, and that portion of Box Elder County beginning at I-15 and the Weber-Box Elder County line; east and north along this line to the Weber-Cache County line; east along this line to the Cache-Rich County line; east and south

along the Rich County line to the Utah-Wyoming State line; north along this line to the Utah-Idaho State line; west on this line to Stone, Idaho-Snowville, Utah road; southwest on this road to Locomotive Springs Wildlife Management Area; east on the county road, past Monument Point and across Salt Wells Flat, to the intersection with Promontory Road; south on Promontory Road to a point directly west of the northwest corner of the Bear River Migratory Bird Refuge boundary; east along an imaginary line to the northwest corner of the Refuge boundary; south and east along the Refuge boundary to the southeast corner of the boundary; northeast along the boundary to the Perry access road; east on the Perry access road to I-15; south on I-15 to the Weber-Box Elder County line.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Area 1: Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone): Clark County, except portions south of the Washougal River; Cowlitz County; and Wahkiakum County.

Area 2B (SW Quota Zone): Pacific County.

Area 3: All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5: All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Brant

Pacific Flyway

California

North Coast Zone: Del Norte, Humboldt and Mendocino Counties.

South Coast Zone: Balance of the State.

Washington

Puget Sound Zone: Skagit County.

Coastal Zone: Pacific County.

Swans

Central Flyway

South Dakota: Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287-89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I-15, north of I-80, and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary; then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge; then west along a line to Promontory Road; then north on Promontory Road to the intersection of SR 83; then north on SR 83 to I-84; then north and west on I-84 to State Hwy 30; then west on State Hwy 30 to the Nevada-Utah State line; then south on the Nevada-Utah State line to I-80.

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Status for the Gierisch Mallow and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R2-ES-2012-0049;
4500030113]

RIN 1018-AY58

Endangered and Threatened Wildlife and Plants; Determination of Status for the Gierisch Mallow and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list as endangered the Gierisch mallow and propose critical habitat for the species under the Endangered Species Act. This action is being taken as the result of a court-approved settlement agreement. These are proposed regulations, and if finalized, the effect of these regulations will be to add the species to the List of Endangered or Threatened Plants and to designate critical habitat under the Endangered Species Act.

DATES: We will accept comments received or postmarked on or before October 16, 2012. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by October 1, 2012.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov> and search for Docket No. FWS-R2-ES-2012-0049, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R2-ES-2012-0049; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

The coordinates, or plot points, or both from which the critical habitat maps are generated are included in the administrative record for this rulemaking and are available at (<http://www.fws.gov/southwest/es/arizona/>), <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0049, and at the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this rulemaking will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and/or at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021; by telephone (602) 242-0210; or by facsimile (602) 242-2513. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

This document consists of a proposed rule to list as endangered *Sphaeralcea gierischii* (Gierisch mallow) and to designate critical habitat for Gierisch mallow. In this proposed rule, we will refer to *Sphaeralcea gierischii* as Gierisch mallow.

Why we need to publish a rule. Under the Endangered Species Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. In this proposal, we are explaining why Gierisch mallow warrants protection under the Endangered Species Act. This rule proposes to list the Gierisch mallow as endangered throughout its range in Mohave County, Arizona, and Washington County, Utah, and proposes

to designate critical habitat for the species. In total, approximately 5,189 hectares (ha) (12,822 acres (ac)) are proposed for designation as critical habitat in both Arizona and Utah.

The Endangered Species Act provides the basis for our action. Under the Endangered Species Act, we can determine that a species is endangered or threatened based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Factors supporting the proposed endangered status for Gierisch mallow include:

- Habitat loss and degradation of appropriate gypsum soils as a result of mining operations and recreation activities, including off-highway vehicle (OHV) use, target shooting, and trash dumping;
- Inadequate existing regulatory mechanisms that allow significant habitat-based impacts, such as regulations governing mining operations;
- The spread of nonnative, invasive plant species such as *Bromus tectorum* (cheatgrass) and *B. rubens* (red brome) that can alter native vegetation and promote conditions that support wildfires; and
- Other natural or manmade factors, including the small population size of Gierisch mallow, natural environmental variability, and climate conditions, such as sustained drought.

This rule proposes designation of critical habitat for Gierisch mallow. Under the Endangered Species Act, we designate specific areas as critical habitat to foster conservation of listed species. Future actions funded, permitted, or otherwise carried out by Federal agencies will be reviewed to ensure they do not adversely modify critical habitat. Critical habitat does not affect private actions on private lands absent Federal funding. We are proposing the following areas as critical habitat for Gierisch mallow:

Critical habitat unit	Federal		State	Totals
	Arizona	Utah	Arizona	
Unit 1. Starvation Point	0	1,022 ha (2,526 ac)	316 ha (782 ac)	1,339 ha (3,309 ac).
Unit 2. Black Knolls	3,586 ha (8,862 ac)	0	263 ha (651 ac)	3,850 ha (9,513 ac).
Totals	3,586 ha (8,862 ac)	1,022 ha (2,526 ac)	580 ac (1,434 ac)	5,189 ha (12,822 ac).

We are preparing an economic analysis. To ensure that we consider the economic impacts of designating critical habitat, we are preparing an economic analysis of the proposed critical habitat designation. We will publish an announcement and seek public comments on the draft economic analysis when it is completed.

We will request peer review of the methods used in our proposal. We will specifically request that several knowledgeable individuals with scientific expertise in this species or related fields review the scientific information and methods that we used in developing this proposal.

We are seeking public comment on this proposed rule. Anyone is welcome to comment on our proposal or provide additional information on the proposal that we can use in making a final determination on the status of this species. Please submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. Within 1 year following the publication of this proposal, we will publish in the **Federal Register** a final determination concerning the listing of the species and the designation of its critical habitat or withdraw the proposal if new information is provided that supports that decision.

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(3) Any information on the biological or ecological requirements of the species and ongoing conservation measures for the species and its habitat.

(4) Current or planned activities in the areas occupied by the species and possible impacts of these activities on this species.

(5) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(6) Specific information on:

(a) The amount and distribution of Gierisch mallow habitat;

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(7) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(8) Information on the projected and reasonably likely impacts of climate change on the Gierisch mallow and proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, we seek information on any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(10) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act, in particular for those areas that are currently being mined for gypsum or proposed to be mined for gypsum in the foreseeable future.

(11) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please note that submissions merely stating support for or opposition to the action under consideration without

providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made “solely on the basis of the best scientific and commercial data available.”

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

The Gierisch mallow was included in the June 25, 2007, petition by WildEarth Guardians to the Service seeking the listing of 475 species in the southwestern United States. Based on information we received in that petition and information readily available in the Service's files, the Service added Gierisch mallow as a candidate for listing in the December 10, 2008, Candidate Notice of Review (73 FR 75176). Species on the candidate list are those fish, wildlife, and plants for which we have sufficient information on biological vulnerability and threats to support the preparation of a listing proposal, but for which development of a listing regulation is precluded by other higher listing priorities. Since 2008, the listing priority number for Gierisch mallow has been a 2, indicating a species with threats that are both imminent and high in magnitude in accordance with our priority guidance published on September 21, 1983 (48 FR

43098). Gierisch mallow has remained a candidate in subsequent Candidate Notices of Reviews (74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011).

Background

It is our intent to discuss below only those topics directly relevant to the proposed listing of the Gierisch mallow as endangered and the proposed critical habitat designation.

Species Information

Gierisch mallow is a perennial, flowering member of the mallow family. It produces few to many stems from a woody caudex (short, thickened, woody stem that is usually subterranean or at ground level). The stems are 43 to 103 centimeters (cm) (17 to 41 inches (in)) tall, and are often dark red-purple. The foliage is bright green and glabrous (not hairy). The leaf blades are 1.2 to 4 centimeters (cm) (0.47 to 1.57 inches (in)) long; 1 to 5 cm (0.4 to 1.9 in) wide; and usually longer than wide. The leaves are usually flat and egg-shaped; the leaf base is heart-shaped to truncate, with 3 to 5 lobes. The inflorescence is compound, with more than one flower per node. The outer envelope of the flower is 0.5 to 1.0 cm (0.2 to 0.4 in) long, green, and uniformly glabrous, and the orange petals are 1.5 to 2.5 cm (0.6 to 0.98 in) long (Atwood and Welsh 2002, p. 161).

Gierisch mallow was named as a unique, distinct species in 2002 (Atwood and Welsh 2002, p. 159). This species of mallow is distinguished from similar species, such as *Sphaeralcea rusbyi* (Rusby's globemallow), by the glabrous (smooth) foliage, few or no stellate (star-shaped) hairs restricted to the leaf margins, larger flowers, and restricted range and habitat.

Another closely related species is *S. moorei* (Moore's globemallow); distinguishing characters are the 3 to 5-parted narrow lobes, bright green leaves, and different habitat. As discussed by Atwood and Welsh (2002, p. 159), the genus *Sphaeralcea* consists of taxa whose morphological distinctions are compromised by overlap of many characters. The characteristics of the mature fruiting carpels (seed-bearing structures) are one of the more important distinguishing characters, but specimens were rarely collected with mature carpels. Atwood and Welsh (2002, pp. 161–163) collected globemallow species in northern Arizona and southern Utah, and reviewed previous collections. The characteristics described in their 2002 taxonomic key allow for the

discrimination of the related and similar taxa known to occur in southern Utah and adjacent northern Arizona, thus making Gierisch mallow a species and, therefore, a listable entity under the Act. The work was published in the peer-reviewed journal *Novon*, which publishes short articles with the primary purpose of the establishment of nomenclature (scientific naming) of vascular plants. Dr. Atwood and Dr. Welsh are very familiar with the flora of Utah; Dr. Atwood is the Collections Manager of the S. L. Welsh Herbarium, and Dr. Welsh is Emeritus Curator of Vascular Plants at Brigham Young University, Utah. After careful review of the 2002 Atwood and Welsh publication and its recognition by the Integrated Taxonomic Information System (ITIS 2012) and its inclusion in the Utah Rare Plant Guide (Utah Rare Plants 2012), it is our conclusion that Gierisch mallow is a valid species because the characteristics described above can be used to distinguish this species from similar species. We also consider it a separate species due to its acceptance in peer-reviewed literature and recognition by taxonomic authorities, as described above.

Biology, Habitat, and the Current Range

Gierisch mallow is only found on gypsum outcrops associated with the Harrisburg Member of the Kaibab Formation in northern Mohave County, Arizona, and adjacent Washington County, Utah (Atwood and Welsh 2002, p. 161). The Harrisburg Member is the most recent (topmost) exposed geologic layer of the Kaibab Formation. The Harrisburg Member is known for its soils containing high levels of gypsum (gypsiferous soils) (Biek and Hayden 2007, p. 58). The Kaibab Formation comprises a continuous layer of exposed limestone rock in the Grand Canyon region (USGS 2012, p. 1). The surrounding plant community is warm desertscrub (Mojave desertscrub). Very little is known about the life history of the Gierisch mallow, as it was only recently described. The species may be perennial because it is woody at the base and the same individuals have been observed for more than one year. It dies back to the ground during the winter and re-sprouts from the base during late winter and spring (January to March), depending on daytime temperatures and rainfall. Information from the Bureau of Land Management (BLM) indicates that many of the Gierisch mallow populations occur on hillsides or steep slopes. The pollination system (self-pollinated or obligate out-crosser), seed dispersal mechanisms, and the conditions under

which seeds germinate are not known. Although we do not know how the species is pollinated, other species of the genus *Sphaeralcea* (globemallows) are pollinated by *Diadasia diminuta* (globemallow bee), which specializes in pollinating plants of this genus. Globemallow bees are considered important pollinators for globemallows (Tepedino 2010, p. 2). These solitary bees, as well as other *Diadasia* species, are known to occur within the range of the Gierisch mallow (Sipes and Tepedino 2005, pp. 490–491; Sipes and Wolf 2001, pp. 146–147), so it is reasonable to assume that they are potential pollinators of Gierisch mallow and other associated vegetation in the surrounding community. Winter rainfall in 2008 produced many seedlings of Gierisch mallow, indicating that they grow from seeds stored in the seed bank (Hughes 2009, p. 13). Higher densities of seedlings were located within known locations in Arizona and Utah after these winter rain events. Additionally, young plants have been observed on two reclaimed areas within an active gypsum mine (Service 2008a, p. 1), further indicating that seeds are stored in the seed bank; however, we do not know the long-term viability of these plants due to the disruption of the original soil composition. Furthermore, Hughes (2011, p. 7) has documented a decline in the numbers of plants in both of the two reclaimed areas over the last 5 years.

We have no information on the historical range of this species because it is a newly discovered plant. Currently, there are 18 known populations of the Gierisch mallow restricted to less than approximately 186 ha (460 ac) in Arizona and Utah. The main populations in Arizona are located south of the Black Knolls, approximately 19.3 km (12 mi) southwest of St. George, Utah, with the southernmost population of this group being on the edge of Black Rock Gulch near Mokaac Mountain. There is another population approximately 4.8 kilometers (km) (3 miles (mi)) north of the Black Knolls, on Arizona State Land Department (ASLD) lands near the Arizona/Utah State line. The Utah population is located on BLM lands within 3.2 km (2 mi) of the Arizona/Utah State line, near the Arizona population on ASLD land.

There are no other known populations of the Gierisch mallow. We theorized that, because gypsum outcrops associated with the Harrisburg Member are scattered throughout BLM lands in northern Arizona and southern Utah, additional populations may exist. Dr. Atwood and Dr. Welsh conducted

extensive surveys in these areas because numerous other rare plant species are associated with these landforms (Atwood 2008, p. 1). One record of a Gierisch mallow from the Grand Canyon-Parashant National Monument was presented to us (Fertig 2012, p. 3); however, after careful scrutiny, Johnson and Atwood (2012, p. 1) determined that this record is actually Rusby's mallow and not Gierisch mallow.

Status and Population Estimates

Atwood (2008, p. 1), and later Hughes (Service 2008a, p. 1), estimated the

population size of the Gierisch mallow from four of the Arizona locations. These populations are referred to as "Hills." There are a total of 18 populations rangewide, with seventeen populations on lands managed by the BLM, and 1 on lands managed by the ASLD. Seventeen populations occur in Arizona, and one occurs in Utah.

Atwood and Hughes' population estimates were simple visual estimates and have only been conducted for four of the 17 populations. These estimates are presented in Table 1 for the areas

surveyed in Arizona. Hughes (2012, pp. 12–14) established belt transects on four of the "Hills" (Hills 1, 2, 4, and 5) and began to count the number of individuals. There is a population on Hill 3, but there are no estimates for it. Data in Table 1 are from files in BLM's St. George Field Office and the Service's Arizona Ecological Services Field Office. The actual transect counts appear in Table 1 in bold, in parentheses. Surveys estimate total population size to be between 7,000 and 12,000 individuals in Arizona.

TABLE 1—POPULATION NUMBERS FOR GIERISCH MALLOW FROM FOUR LOCATIONS IN ARIZONA

Site	Numbers 2001	Numbers 2003	Numbers 2007	Numbers 2008	Numbers 2009	Numbers 2010	Numbers 2011
Hill 1 (BLM)	150+ (100)	50 (30)	(58)	No data	300 (155)	200 (85)	*
Hill 2 (BLM)	150+ (100)	40 (31)	(15)	50 (37)	40 (23)	No data	*
Hill 4 (BLM)	No data	5,000–9,000 (180)	(176)	(65)	No estimate (108)	No estimate (170)	No estimate (136)
Hill 5 (ASLD)	No data	2,000–3,000 (115)	No data	No data	No data	No data	No data

* These sites were visited in 2011, and Gierisch mallow plants were observed; however, no data were collected.

Total population size in Utah was estimated to be approximately 200 individuals in 2005 (Franklin 2007, p. 1). In spring 2008 and 2009, Hughes (2008a, p. 12; Hughes 2009, p. 15) conducted more extensive surveys of gypsiferous soils in Utah and estimated the population to be between 5,000 and 8,000 individuals. The Service plant ecologist and staff from the BLM's Arizona Strip Field Office visited all of the known locations in February 2008 (Service 2008a, p. 1). Population estimates were not made at this time because the plants were just emerging from winter dormancy, but there were plants present at all of the known locations visited.

Since surveys began, no new populations have been found outside of the known areas. In addition to the information provided in Table 1, Hughes (2008a, p. 12) reported counts for transects on two rehabilitated sites within the Western Mining and Minerals, Inc., gypsum operation on and near Hill 4, where 85 and 60 plants were counted on the two transects in 2008. These plants are reestablishing themselves in the reclaimed areas from the original seed bank. Hughes (2009, p. 14) counted 50 and 32 plants on these sites in 2009. In 2011, Hughes (2012, p. 7) completed transect surveys on the same reclaimed sites as he did in 2008 and 2009, and counted 67 plants on one rehabilitated site and 1 plant on the other rehabilitated site. We do not have any information to indicate why there was a substantial decrease in plant

numbers at these reclaimed areas. Because the Gierisch mallow is mostly only found in gypsiferous soils, it is possible that they are declining due to disruption of the original soil composition in these reclaimed soils. Outside of the reclaimed areas, some populations of the Gierisch mallow appear to be fluctuating annually according to data provided by Hughes (2011, pp. 4–7). Some populations appear to be decreasing, others have shown slight increases, and some populations have remained stable (Hughes 2011, pp. 4–7).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 224, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Because the Gierisch mallow has a limited range and distribution, including being found in a specific soil composition (gypsum outcrops), it is highly susceptible to habitat destruction and modification. Specifically, habitat destruction or modification resulting from mining operations, recreational activities, and wildfires associated with the spread of nonnative grass species, are threats to the Gierisch mallow.

Mining

Gypsum mining is an ongoing source of habitat modification for the Gierisch mallow in Arizona. Gypsum is used in construction (including the manufacturing of drywall), and for a variety of agricultural purposes. Gypsum deposits are found at various depths within the Harrisburg Member. Many of the most valuable gypsum deposits are not at ground level. This means that surface materials need to be removed and stockpiled, while the subsurface gypsum is mined. The stockpiled surface material is then used to reclaim the area after the gypsum has been removed. Because all the topsoil is temporarily removed, gypsum mining temporarily removes the plant's habitat and any plants growing in the affected area. Although the topsoil is replaced, the original soil composition is altered; therefore, the reclaimed soils do not contain the original gypsum

composition with which the plants are associated.

There is an existing gypsum mining operation (Black Rock Gypsum Mine) on BLM land affecting the Hill 4 population, the largest population in Arizona (Hughes 2009, p. 13). The plants in the Hill 4 area are not restricted to one hill, but are scattered among several smaller hills that all contain gypsum outcrops. One of the larger deposits is currently being mined. A large amount of soil has been removed, but we cannot quantify how much of the habitat this comprises at this site, as we do not have access to ASLD lands. Based on prior monitoring before access was limited (Hughes 2008, p. 13), there are other small hills within the footprint of the mining claim that support the Gierisch mallow; therefore, we assume the Gierisch mallow occupied the disturbed area. Western Mining and Minerals, Inc., the mine operator, has inquired about expanding the current operation (Service 2008a, p. 1). The area they propose to expand into currently supports the largest portion of the Hill 4 population, estimated to be between 5,000 and 9,000 plants (Hughes 2008, p. 14), which comprises almost half of the entire population statewide and most of the population in Arizona. The proposed expansion would remove the entire population and its habitat on Hill 4. An environmental assessment (under the National Environmental Policy Act 40, 42 U.S.C. 4321 *et seq.*) for expansion of the quarrying activities within the Black Rock Gypsum Mine has been completed, and the Mining Plan of Operation has been approved (BLM 2008a). Because the demand for gypsum has declined along with the decrease in the housing market, mining activity has not yet reached the expansion area (Cox 2011a, pers. comm.). Recent discussions with the BLM indicate that the expansion could happen as soon as 3 years from now or may take up to 10 years, depending on the housing market, but BLM believes the expansion is very likely to happen (Cox 2011a, pers. comm.).

There is another gypsum mine, located near Hill 5, supporting another large Arizona population (approximately 2,000–3,000 plants). This mine, operated by Georgia-Pacific, is on ASLD lands and encompasses 178 ha (440 ac). Service biologists did not receive permission to enter the site in February 2008, but, through the site boundary fence, did notice at least one pile of spoils near the population, indicating some recent surface-modifying activity prior to the Service biologists' visit. The lease was first issued in 2006, but Georgia-Pacific has

not mined anything, due to the slowing of the economy. The surface-modifying activity observed in February 2008 was likely a result of moving topsoil in preparation to begin mining activities (Dixon 2011, p. 1). Because the lease is for 20 years, we expect that mining operations will begin at some point within the next 14 years, or when the housing market improves. We presume that habitat for the species would be affected by the operation because the technique for gypsum mining necessarily involves removal of the topsoil, eliminating, at least temporarily, the species' ability to survive there. There are no known protection measures for Gierisch mallow or its habitat within the lease on State trust lands.

In addition to the Georgia-Pacific mine, there are several ASLD-issued exploration permits in the area on ASLD lands surrounding Hill 5. These are all relatively new claims, and no significant work has been done on them, yet some drilling was completed, but no other exploration or mining work has occurred. With the depressed housing market, the ASLD does not anticipate any gypsum mining will occur until the housing market improves (Dixon 2011, p. 1).

Gypsum mining is a threat to this species and its habitat. The mining operation removes plants and habitat for the duration of the mining activities, and, post-mining, the reclaimed areas may or may not be capable of supporting the plants. A few Gierisch mallows were seen on reclaimed areas near Hill 4, but no information on the density of plants before the disturbance exists. Plants continue to be observed in two reclaimed areas near Hill 4; however, the numbers are relatively low (Hughes 2012, pp. 6–7). Furthermore, it is unknown if restored areas will support the plants sufficiently to restore populations to pre-mining levels; restoration efforts with this species are currently being planned within the Black Rock Mine to assess the feasibility of seeding reclaimed areas with Gierisch mallow (Service 2008b, p. 1).

We conclude that the ongoing and future gypsum mining activities, as authorized by the BLM and the ASLD, are a significant threat to this species. Although there has been no mining activity on ASLD lands since 2007, the Service believes this inactivity is temporary and that mining will resume when the housing market improves in the future. There will be a significant reduction in the number of individuals of the species when the Western Mining and Minerals Inc., operation (Black Rock Gypsum Mine) expands, and when

mining activities resume at the Georgia-Pacific mine on lands managed by the ASLD. Although Hills 4 and 5 comprise only 2 of the 18 populations, over half of all the known Gierisch mallow plants are in these two areas. That would leave the other Arizona locations and the one Utah population, and those areas support fewer plants. The loss of suitable habitat at Hills 4 and 5 has resulted in the loss of more than 50 percent of the existing populations. The Service believes this would result in a compromise to the long-term viability of the species, due to reduced reproductive potential and fragmentation. The limited distribution of this species, the small number of populations, the limited amount of habitat, and the species' occurrence only in areas that support high-quality gypsum deposits lead us to conclude that mining is a significant threat to the species.

Grazing

In general, grazing practices can change vegetation composition and abundance, cause soil erosion and compaction, reduce water infiltration rates, and increase runoff (Klemmedson 1956, p. 137; Ellison 1960, p. 24; Arndt and Rose 1966, p. 170; Gifford and Hawkins 1978, p. 305; Robinson and Bolen 1989, p. 186; Waser and Price 1981, p. 407; Holechek *et al.* 1998, pp. 191–195, 216; and Loftin *et al.* 2000, pp. 57–58), leaving less water available for plant production (Dadkash and Gifford 1980, p. 979). Fleischner (1994, pp. 630–631) summarized the ecological impacts of grazing in three categories: (1) Alteration of species composition of communities, including decreases in density and biomass of individual species, reduction of species richness, and changing community organization; (2) disruption of ecosystem functioning, including interference in nutrient cycling and ecological succession; and (3) alteration of ecosystem structure, including changing vegetation stratification, contributing to soil erosion, and decreasing availability of water to biotic communities.

Grazing occurs in most populations of the Gierisch mallow in Arizona and Utah on both BLM and ASLD lands. Grazing is excluded from both the Black Rock Gypsum Mine on BLM land and the Georgia-Pacific Mine on ASLD land. Gierisch mallow populations occur on three BLM grazing allotments in Arizona and one allotment in Utah. In Arizona, the Black Rock, Lambing-Starvation, and Purgatory allotments all contain populations of Gierisch mallow. The Black Rock Allotment encompasses 15,250 ha (37,685 ac) that are grazed year-round, but this allotment is on a

deferred grazing system, which means that pasture use is rotated so that each pasture receives a set amount of rest (non-use) every year. As previously stated, there are an additional 1,152 ha (2,846 ac) in this allotment that are unavailable for grazing because of the Black Rock Gypsum Mine. Gierisch mallow occurs in both the "Lizard 1" and "Lizard 2" pastures within this allotment, and both pastures are typically used in the spring to allow the livestock to utilize cheatgrass when it is still green. These two pastures are typically rotated, that is used every other year so that one pasture receives a full year of rest.

The Lambing-Starvation Allotment encompasses 5,446 ha (13,457 ac) that are grazed from November 16 through May 15 every season and is also on a deferred system. Gierisch mallow occurs in two of the three pastures in this allotment, the North Freeway and South Freeway pastures. These two pastures are also used in the spring, as the third pasture is along the Virgin River and contains critical habitat for the endangered southwestern willow flycatcher (*Empidonax traillii extimus*). Because the third pasture contains critical habitat for the southwestern willow flycatcher, its use is restricted seasonally, causing livestock to spend more time in the two pastures containing Gierisch mallow, including during the spring growing season for the Gierisch mallow. The Lambing-Starvation Allotment also contains ASLD lands with a grazing lease; however, the BLM oversees the management of this allotment. The Purgatory Allotment encompasses 1,985 ha (4,905 ac) in a single pasture that is grazed from December 1 through May 31 every season. Only a small portion of a Gierisch mallow population occurs within this allotment. Information from the BLM indicates that many of the Gierisch mallow populations occur on hillsides or steep slopes, and livestock do not typically go up to these areas looking for forage unless it is a dry year (Roaque 2012a, p. 2). All three allotments contain significant amounts of nonnative, invasive annual grasses, including cheatgrass and red brome, although red brome appears to be more prevalent. According to observations by BLM range personnel, both cheatgrass and red brome tend to not grow well in gypsum outcrops in normal (dry) rainfall years; however, they can be abundant in Gierisch mallow habitat during wet years. This was observed after the fall 2010 and winter 2011 rains (Roaque 2102b, p. 1).

In Utah, grazing occurs in the one allotment that contains Gierisch mallow

and its habitat. The Curly Hollow Allotment is comprised of approximately 9,105 ha (22,500 ac) of BLM land and 2,226 ha (5,500 ac) of Utah State trust land. This is a four-pasture allotment that is managed for intensive grazing and a rest rotation system similar to those described above. Gierisch mallow only occurs in the River Pasture, which is usually grazed from November 1 through February 28 of each season. Recent wildfires had burned much of the upper three pastures; therefore, the River Pasture has been grazed beyond February 28 for several years to alleviate pressure on the three upper pastures while the vegetation recovered from the wildfire in the absence of livestock grazing (Douglas 2012a, p. 1). The three upper pastures are now considered rehabilitated, and grazing in the River Pasture should resume with its normal season of use from November 1 through February 28. The general condition of the range in the River Pasture is fair to good (moderate cheatgrass spread); however, portions near Sun River, and the *Astragalus holmgreniorum* (Holmgren milkvetch) (an endangered plant) habitat, have been disturbed in the past, resulting in a more significant spread of cheatgrass and *Malcolmia africana* (African mustard). Livestock utilization on Gierisch mallow has not been monitored by BLM's St. George Field Office, but conditions are expected to be similar to livestock utilization described above in Arizona (Douglas 2012a, p. 1).

In addition to consumption, livestock are known to trample plants. As noted, livestock do not typically go up into Gierisch mallow habitat on the BLM allotments in Arizona and Utah due to the steeper hillsides and slopes that this plant is known to inhabit (Roaque 2012a, p. 2; Douglas 2012a, p. 1). Given the grazing management described above and the observations of how infrequently livestock are in Gierisch mallow habitat, trampling of plants does not likely significantly impact the overall viability of these populations.

Habitat degradation in the Mojave Desert, through loss of microbiotic soil crusts (soils containing algae, lichen, fungi, etc.) due to livestock grazing, is a great concern (Floyd *et al.* 2003, p. 1704). Grazing can disturb soil crusts and other fundamental physical factors in landscapes. For example, climatologists and ecologists have attributed increasing soil surface temperatures and surface reflectivity in the Sonoran Desert to grazing-related land degradation (Balling *et al.* 1998 in Floyd *et al.* 2003, p. 1704). Biological soil crusts provide fixed carbon on

sparsely vegetated soils. Carbon contributed by these organisms helps keep plant interspaces fertile and aids in supporting other microbial populations (Beymer and Klopatek 1991 in Floyd *et al.* 2003, p. 1704). In desert shrub and grassland communities that support few nitrogen-fixing plants, biotic crusts can be the dominant source of nitrogen (Rychert *et al.* 1978 and others in Floyd *et al.* 2003, p. 1704). Additionally, soil crusts stabilize soils, help to retain moisture, and provide seed-germination sites. Soil crusts are effective in capturing wind-borne dust deposits, and have been documented contributing to a 2- to 13-fold increase in nutrients in southeastern Utah (Reynolds *et al.* 2001 in Floyd *et al.* 2003, p. 1704). The presence of soil crusts generally increases the amount and depth of rainfall infiltration (Loope and Gifford 1972 and others in Floyd *et al.* 2003, p. 1704).

In addition to loss of soil crusts, grazing often leads to soil compaction, which reduces water infiltration and can lead to elevated soil temperatures (Fleischner 1994, p. 634; Floyd *et al.* 2003, p. 1704). All of these soil disturbances can increase erosion by both wind and water (Neff *et al.* 2005, p. 87). Because Gierisch mallow only occurs in gypsum soil outcrops, this loss of soil crust, increased soil compaction, and potential increase in erosion may lead to reduced fitness of individual plants as nutrients decrease when livestock enter and concentrate in these areas during dry years. Additionally, it is possible that individual plants, especially seedlings, are not able to take root in any unstable soils that result from loss of soil crusts due to livestock grazing. Increased erosion and decreased water infiltration from loss of soil crusts can lead to depletion of gypsum and other specific soil features that the Gierisch mallow requires. These effects may be significant to Gierisch mallow populations because grazing occurs at some level throughout all populations. Reduced fitness of individual plants may lead to reduced overall reproduction, which may lead to decreases in the overall population.

Grazing can also lead to changes in vegetation structure, including the proliferation of nonnative, invasive species such as cheatgrass and red brome. Livestock have been implicated in the spread of weeds (Brooks 2009, p. 105), and both abundance and diversity of native plants and animals is lower in grazed areas as compared to ungrazed habitat in the Mojave Desert (Brooks 2000, p. 105). We do not know the current density of these two nonnative grass species within the Gierisch

mallow populations; however, we do know that both of these nonnative species are prevalent throughout the Mojave Desert in northwest Arizona and southwest Utah, including throughout all three allotments in Arizona and the allotment in Utah (Roaque 2012a, pp. 1–2; Douglas 2012, p. 1). While cheatgrass and red brome appear not to favor gypsiferous soils under normal (dry) conditions, they can be abundant in Gierisch mallow habitat during wet years, as was recently observed (Roaque 2102b, p. 1). Red brome has also been documented in similar gypsiferous soils near Gierisch mallow populations after wet years (Roth 2012, entire). The proliferation of cheatgrass and red brome can lead to competition with Gierisch mallow for both water and nutrients, which can lead to decreased reproduction and fitness in individual plants.

In addition to decreased reproduction and fitness in established plants, the spread of these two species can also make the habitat less suitable for establishment of new plants. If cheatgrass and red brome reach high densities throughout all of the Gierisch mallow populations, this can lead to a significant reduction in the proper functioning of the habitat, which in turn would lead to a reduction in fitness and reproduction population-wide and an overall population decline. Given the limited distribution of Gierisch mallow and the known abundance of cheatgrass and red brome in its habitat, continued proliferation of these two species into Gierisch mallow habitat is likely to have significant effects to the species and its habitat. The number of populations may be reduced and their current limited distribution may become even more limited. Additionally, the overall resiliency of the species may be significantly reduced, especially if the spread of these nonnative grasses leads to other stochastic events, such as wildfire. Although grazing can help promote the spread of nonnative weeds such as cheatgrass and red brome, and their spread is a threat to the Gierisch mallow and its habitat, we do not know how much livestock contribute to their spread. The threat of wildfire resulting from the spread of nonnative species will be discussed in more detail in “Nonnative, Invasive Species” below.

In summary, livestock grazing can have many effects on the plant and its habitat, and on desert ecosystems in general, particularly on soils. However, livestock do not typically spend much time in Gierisch mallow habitat, due to the steeper hillsides and slopes that this plant inhabits, unless drought conditions cause livestock to search for

forage on the steeper hillsides and slopes. When livestock do enter Gierisch mallow habitat, some limited soil disturbance may occur, and individual plants may be affected, although we do not anticipate population-level effects to the Gierisch mallow. Livestock have been implicated as a mechanism for the spread of cheatgrass and red brome. Although we do not know the extent to which livestock spread these two nonnative grasses, the spread of these grasses does pose a threat to the Gierisch mallow. Because of these potential effects from livestock grazing, we anticipate grazing to be a moderate threat to the species, especially during drought years.

Recreation Activities

Mining operations in Utah do not pose a threat to Gierisch mallow population at this time, but there is evidence of off-road vehicle (OHV) activity in the area. Several of the smaller hills were criss-crossed with OHV tracks (Service 2008, p. 1), and these areas are closed to OHV use off of designated roads and trails (Douglas 2012b, p. 1); therefore, this is considered unauthorized OHV use. Washington County is projected to be one of the fastest growing counties in Utah, with a growth rate of 3.9 percent. The population of St. George has grown from 64,201 (2005) to 88,001 (2010), and is expected to increase to 136,376 by 2020 (St. George Area Chamber 2010, pp. 2–3). The surrounding open spaces around St. George are popular for OHV use because of the relatively flat terrain and ease of access.

Vollmer *et al.* (1976, p. 121) demonstrated that shrubs exposed to repeated driving (continued use of the same tracks) were severely damaged. Both live and dead stems were broken and pressed to the ground. Stems still standing exhibited broken twigs or shoots and leaves were dislodged. Damage to about 30 percent of all shrubs examined in tire tracks were scored at 100 percent damage. Vollmer *et al.* (1976, p. 121) go on to state that approximately 54 percent of the shrubs in the tracks sustained 90 percent or greater damage. The numbers of annual shrubs growing in regularly driven ruts were lower than in other areas (Vollmer *et al.* 1976, p. 124). These data indicate that individual Gierisch mallow plants may be susceptible to the effects of OHV use in this area. Plants may be damaged to the point that they are no longer viable and able to produce seed. Seedlings may not be able to reach maturity and reproduce if they are crushed to point of significant damage. As unauthorized OHV use increases in

these areas and associated unauthorized trails proliferate, this population may experience an overall reduction in fitness for the Gierisch mallow.

In addition to the direct effects to vegetation, unauthorized OHV use can have the same indirect effects that were previously described by livestock grazing, including soil compaction, loss of soil crusts, erosion, and the promotion and spread of nonnative invasive species. Refer to the livestock grazing discussion above for a complete description of the effects to soil composition and how those effects impact Gierisch mallow and its habitat.

In summary, we consider continued unauthorized OHV use (off of designated roads) to be a potential threat to this species and its habitat in Utah. Continued unauthorized OHV use can have a significant effect on the long-term viability of the Utah population of the Gierisch mallow because habitat degradation can be severe enough to prevent reestablishment of new plants, as well as removing mature, reproducing plants from the population. As stated above, Hughes (2009, p. 14) estimated this population to be between 5,000 and 8,000 individuals in 2009. While this is only one of 18 known populations, this is the second largest population of the plant and this population includes almost half of the total population, rangewide. This population is important to the long-term viability of the species. Given that this large population only encompasses 1.01 ha (2.5 ac) and is easily accessible, these activities may lead to enough Gierisch mallow plants being crushed to reduce the overall fitness of the population. Therefore, we conclude that this activity is a moderate threat to the species.

Other Human Effects

The same areas in Utah that are subjected to unauthorized OHV use are also used for target shooting and trash dumping. Evidence of both of these activities was present in Utah during the February 2008 visit. There was one large appliance dumped near the population, obviously used for target practice (Service 2008a, p. 1). People engaging in target shooting near the population degrade habitat by trampling the soil and plants, and by driving vehicles on the habitat to access areas for target shooting. The unauthorized use of BLM lands for these activities can contribute to the degradation of habitat for the Gierisch mallow by causing the same direct and indirect effects described above for OHV use. It is also possible that trash dumping can lead to soil contamination, which would most likely not be beneficial to the species.

The full extent of damage to soils may not be evident until years or even decades after the original disturbance (Vollmer *et al.* 1976, p. 115). We did not observe these activities near the Arizona populations. Similar to the effects of unauthorized OHV use, we consider illegal trash dumping and impacts associated with target shooting to be moderate threats to this species and its habitat in Utah.

Nonnative, Invasive Species

The spread of nonnative, invasive species is considered the second largest threat to imperiled plants in the United States (Wilcove *et al.* 1998, p. 608). Invasive plants—specifically exotic annuals—negatively affect native vegetation, including rare plants. One of the most substantial effects is the change in vegetation fuel properties that, in turn, alter fire frequency, intensity, extent, type, and seasonality (Menakis *et al.* 2003, pp. 282–283; Brooks *et al.* 2004, p. 677; McKenzie *et al.* 2004, p. 898). Shortened fire return intervals make it difficult for native plants to reestablish or compete with invasive plants (D'Antonio and Vitousek 1992, p. 73).

Invasive plants can exclude native plants and alter pollinator behaviors (D'Antonio and Vitousek 1992, pp. 74–75; DiTomaso 2000, p. 257; Mooney and Cleland 2001, p. 5449; Levine *et al.* 2003, p. 776; Traveset and Richardson 2006, pp. 211–213). For example, cheatgrass and red brome outcompete native species for soil nutrients and water (Melgoza *et al.* 1990, pp. 9–10; Aguirre and Johnson 1991, pp. 352–353; Brooks 2000, p. 92), as well as modify the activity of pollinators by producing different nectar from native species (Levine *et al.* 2003, p. 776) or introducing nonnative pollinators (Traveset and Richardson 2006, pp. 208–209). Introduction of nonnative pollinators or production of different nectar can lead to disruption of normal pollinator interactions for the Gierisch mallow.

Cheatgrass and red brome are particularly problematic nonnative, invasive annual grasses in the intermountain west. If already present in the vegetative community, cheatgrass and red brome increase in abundance after a wildfire, increasing the chance for more frequent fires (D'Antonio and Vitousek 1992, pp. 74–75; Brooks 2000, p. 92). In addition, cheatgrass invades areas in response to surface disturbances (Hobbs 1989, pp. 389, 393, 395, 398; Rejmanek 1989, pp. 381–383; Hobbs and Huenneke 1992, pp. 324–325, 329, 330; Evans *et al.* 2001, p. 1308). Cheatgrass and red brome are

likely to increase due to climate change (see “Climate Change and Drought” discussion, below, under Factor E) because invasive annuals increase biomass and seed production at elevated levels of carbon dioxide (Mayeux *et al.* 1994, p. 98; Smith *et al.* 2000, pp. 80–81; Ziska *et al.* 2005, p. 1328).

Although cheatgrass and red brome both occur in close proximity to Gierisch mallow habitat, red brome is more prevalent (Roague 2012b, p. 1). As previously described above, both cheatgrass and red brome tend to not grow well in gypsum outcrops in normal (dry) rainfall years; however, they can be abundant in the Gierisch mallow habitat during wet years. Red brome has also been documented in similar gypsiferous soils near the Gierisch mallow populations after wet years (Roth 2012, entire). As we stated above, we do not anticipate a high degree of surface disturbances in the Gierisch mallow habitats in the near future from livestock grazing except during drought years; however, increased mining in Arizona and unauthorized OHV use, target shooting, and trash dumping in the Utah population of the Gierisch mallow may lead to significant amounts of surface disturbance, providing conditions that allow red brome to expand into and increase in density within Gierisch mallow habitat.

Invasions of annual, nonnative species, such as cheatgrass, are well documented to contribute to increased fire frequencies (Brooks and Pyke 2002, p. 5; Grace *et al.* 2002, p. 43; Brooks *et al.* 2003, pp. 4, 13, 15). The disturbance caused by increased fire frequencies creates favorable conditions for increased invasion by cheatgrass. The end result is a downward spiral where an increase in invasive species results in more fires, more fires create more disturbances, and more disturbances lead to increased densities of invasive species. The risk of fire is expected to increase from 46 to 100 percent when the cover of cheatgrass increases from 12 to 45 percent or more (Link *et al.* 2006, p. 116). The invasion of red brome, another nonnative grass, into the Mojave Desert of the intermountain west poses similar threats to fire regimes, native plants, and other federally protected species (Brooks *et al.* 2004, pp. 677–678). Brooks (1999, p. 16) also found that high interspace biomass of red brome and cheatgrass resulted in greater fire danger in the Mojave Desert. Brooks (1999, p. 18) goes on to state that the ecological effects of cheatgrass and red brome-driven fires are significant because of their intensity and consumption of perennial shrubs.

In the absence of cheatgrass and red brome, the Gierisch mallow grows in sparsely vegetated communities unlikely to carry fires (see *Biology, Habitat, and the Current Range* section). Thus, this species is unlikely to be adapted to survive high frequency fires. As described in the *Biology, Habitat, and the Current Range* section, the total range of this species covers approximately 186 ha (460 ac), and each of the 18 populations occupies a relatively small area, ranging between 0.003 ha (0.01 ac) and 38.12 ha (94.36 ac). A range fire could easily impact or eliminate one or all populations and degrade Gierisch mallow habitat to the point that it will no longer be suitable for the plant. The loss of one population and associated suitable habitat would be a significant loss to the species. Therefore, the potential expansion of invasive species and associated increase in fire frequency and intensity is a significant threat to the species, especially when considering the limited distribution of the species and the high potential of the Gierisch mallow population extinctions.

In summary, we know that invasive species can impact plant communities by increasing fire frequencies, outcompeting native species, and altering pollinator behaviors. Although invasive species do not occur in high densities in Gierisch mallow habitat during normal (dry) rainfall years, nonnative, invasive species, especially red brome, can be very abundant in wet rainfall years. Given the ubiquitous nature of cheatgrass and red brome in the Intermountain West and their ability to rapidly invade dryland ecosystems (Mack 1981, p. 145; Mack and Pyke, 1983, p. 88; Thill *et al.* 1984, p. 10), we expect these nonnative species to increase in the future in response to surface disturbances from increased mining activities, recreation activities, and global climate change (see “Climate Change and Drought” below). An increase in cheatgrass and red brome is expected to increase the frequency of fires in Gierisch mallow habitat, and the species is unlikely to survive increased wildfires due to its small population sizes and the anticipated habitat degradation. Therefore, we determine that nonnative, invasive species and associated wildfires constitute a significant threat to habitat of the Gierisch mallow.

Summary of Factor A

Based on our evaluation of the best available scientific information, we conclude that the present and future destruction and modification of the habitat for the Gierisch mallow is a

significant threat. Destruction and modification of habitat for the Gierisch mallow are anticipated to result in a significant decrease in both the range of the species and the size of the population of the species.

Mining activities impacted Gierisch mallow habitat in the past and will continue to be a threat in the future to the species' habitat throughout its range. All of the populations and habitat are located on BLM and ASLD lands, which have an extensive history of, and recent successful exploration activities for, gypsum mining. Two of the eighteen populations are located in the immediate vicinity of gypsum mining, including the Black Rock Gypsum Mine which has an approved Mining Plan of Operation to expand into the largest Gierisch mallow population. Gypsum mining is expected to continue and expand in the near future (Cox 2011b, p. 1; Dixon 2012, p. 1). Considering the small area of occupied habitat immediately adjacent to existing gypsum mines, anticipated future mining will result in the loss of habitat for these populations in the future, and these two populations comprise more than 50 percent of the entire species' distribution.

Although livestock do not typically eat Gierisch mallow, livestock grazing can affect Gierisch mallow habitat more significantly during drought years, as livestock move into the Gierisch mallow habitat searching for forage. Additionally, livestock have been implicated in spreading nonnative, invasive species such as red brome and cheatgrass, although we do not know the extent to which livestock contribute to the spread of these two nonnative grasses.

Red brome and cheatgrass are documented to occur in all 18 populations of the Gierisch mallow, although mostly after wet rain years. The threat of fire caused by annual nonnative species invasions is exacerbated by mining activities, livestock grazing, and recreation activities. Therefore, we conclude that Gierisch mallow and its habitat face significant threats as a result of habitat loss and modification.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Gierisch mallow is not typically a plant of horticultural interest; however, we do have information regarding possible seed collection from wild plants on BLM and ASLD department lands for commercial sale (Roth 2011, p. 1). Collection of seeds from both BLM and ASLD is prohibited,

and only the BLM offers a special permit to collect seeds of candidate species. Each respective land management agency referred the matter to its law enforcement branches. Because collection is restricted, and collection permits are only issued for scientific research or educational purposes by the Arizona Department of Agriculture (Austin 2012, p. 1), we do not expect collection to be a regular occurrence. See Factor D discussion, below, for a complete description of when permits are issued for collection of the Gierisch mallow. We are not aware of any other instances when the Gierisch mallow has been collected from the wild other than as a voucher specimen (specimen collected for an herbarium) (Atwood and Welsh 2002, p. 161). Therefore, we conclude that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the Gierisch mallow now, and we have no information to indicate that it will become a threat in the future.

C. Disease or Predation

The flowering stalks of the Gierisch mallow are eaten by livestock. All of the Gierisch mallow populations on BLM lands are within grazing allotments. Herbivory has been documented by a BLM ecologist (Service 2008a, p. 1), and Atwood (2008, p. 1). Hughes has found that the mallow is eaten during drought years, when other forage is reduced or unavailable. The plant is also grazed during non-drought times, but not as heavily. The Gierisch mallow plants located near water sources (stock tanks and drinkers) are also heavily browsed (Hughes 2008b, p. 1) because livestock tend to congregate near sources of water. When Atwood (2008, p. 1) was surveying the populations to collect fruit of the Gierisch mallow during drought years, Atwood was unable to locate any fruit because all of the flowering stalks had been consumed by livestock. The effect of sporadic grazing of plants is unknown, but persistent grazing can reduce the reproductive output of the plants, potentially reducing the size of the smaller populations, especially during drought years. As previously described under Factor A, livestock do not typically spend significant amounts of time in Gierisch mallow habitat, due to the hillsides and steep slopes that the Gierisch mallow typically inhabits, although livestock will enter into Gierisch mallow habitat during drought periods.

Herbivory from livestock is not a significant threat, because of the steepness of the terrain on which the

plant is typically located and because the herbivory that does occur is mostly limited to drought years when the plant is not overly abundant. Although herbivory is likely to continue to some degree, especially during drought years, recruitment from the seed bank has been documented in recent years, indicating that herbivory by livestock is not likely to diminish the overall fitness and reproductive ability of the larger Gierisch mallow populations. Smaller populations of the Gierisch mallow are likely to be more susceptible to the effects of herbivory during drought years.

We have no information that disease is affecting the plants. Therefore, based on the best available information, we conclude that disease is not a threat to the Gierisch mallow, and that predation (herbivory, along with some related trampling) is a moderate threat during drought years.

D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address or alleviate the threats to the species discussed under the other factors. Section 4(b)(1)(A) of the Act requires the Service to take into account "those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species * * *." In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and tribal laws, plans, regulations, and other such mechanisms that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

Having evaluated the significance of the threat as mitigated by any such conservation efforts, we analyze under Factor D the extent to which existing regulatory mechanisms are inadequate to address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats. In this section, we review existing State and Federal regulatory mechanisms to determine whether they effectively reduce or remove threats to the Gierisch mallow.

State Regulations

Over 90 percent of the species' known habitat and over 50 percent of known populations are located on BLM and ASLD lands in Arizona mining claims. There are no laws protecting the Gierisch mallow's habitat on State or private lands in Arizona. This species is currently protected by the Arizona Native Plant Act (ANPA). Since it became a candidate species in 2008, Arizona protects the Gierisch mallow as "Highly Safeguarded." Plants in the "Highly Safeguarded" category under the ANPA include "plants resident to this State and listed as endangered, threatened, or category 1 in the Federal endangered species act of 1973" (ANPA 1997, p. 4). The ANPA controls collecting, and limited scientific collection of "Highly Safeguarded" species is allowed for research and educational purposes (Austin 2012, p. 1), but the ANPA provides no protection for plant habitat. Private landowners are required to obtain a salvage permit to remove plants protected by the ANPA; however, there are no known private lands containing the Gierisch mallow. Furthermore, seed collection on ASLD lands is prohibited, as described above under Factor B, although there are no ASLD regulations protecting habitat for the Gierisch mallow. While the ANPA may be effectively protecting the species from direct threats, it is not designed to protect the species' habitat.

In addition to the Black Rock Gypsum Mine on BLM lands in Arizona, discussed below, the Georgia-Pacific Mine on ASLD Land is in close proximity to a large Gierisch mallow population. The ASLD has fairly strict reclamation provisions and bonding requirements when they approve a Mining Plan of Operation; however, any decision that the ASLD makes on whether or not to lease land is based strictly on the benefit of the State Trust. The ASLD would not deny a mine, or any other project, based on the presence of an endangered or threatened species; however, they can have stipulations written into the ASLD lease or the mining company's reclamation plan that would require them to make allowances for federally listed species (Dixon 2012, p. 1). With listed plants, these stipulations can include seed collection or transplanting plants from the footprint of the mine; however, because the Gierisch mallow is not currently listed, the ASLD does not currently have to include these stipulations in reclamation plans. Because the ASLD does not have to require mitigation stipulations to protect the Gierisch mallow or its habitat, we conclude that

this regulatory mechanism is insufficient to protect the Gierisch mallow from threats to its habitat associated with mining on ASLD lands.

Federal Regulations

Mining Activities on BLM Lands

We have previously identified habitat loss associated with gypsum mining as a potential threat to the species. On BLM-managed lands, this mining occurs pursuant to the Mining Law of 1872 (30 U.S.C. 21 *et seq.*), which was enacted to promote exploration and development of domestic mineral resources, as well as the settlement of the western United States. It permits U.S. Citizens and businesses to freely prospect hardrock (locatable) minerals and, if a valuable deposit is found, file a claim giving them the right to use the land for mining activities and sell the minerals extracted, without having to pay the Federal government any holding fees or royalties (GAO 1989, p. 2). Gypsum is frequently mined as a locatable mineral, and gypsum mining is, therefore, subject to the Mining Law of 1872. The BLM implements the Mining Law through Federal regulations, 43 CFR part 3800.

The operators of mining claims on BLM lands must reclaim disturbed areas (Cox 2012, p. 1). The BLM's regulations also require the mitigation of mining operations so that operations do not cause unnecessary or undue degradation of public lands. Unnecessary or undue degradation is generally referred to as "harm to the environment that is either unnecessary to a given project or violates specified environmental protection statutes" (USLegal, 2012, p. 1). Furthermore, it is unclear what specific activities would constitute unnecessary or undue degradation in relation to the Gierisch mallow and its habitat.

The Gierisch mallow is listed as a BLM sensitive species in both Arizona and Utah. Sensitive species designation on BLM lands is afforded through the Special Status Species Management Policy Manual #6840 (BLM 2008B, entire) which states that on BLM-administered lands, the BLM shall manage Bureau sensitive species and their habitats to minimize or eliminate threats affecting the status of the species, or to improve the condition of the species habitat (BLM 2008B, pp. 37–38).

The BLM's regulations do not prevent the Black Rock Gypsum Mine's expansion into Gierisch mallow habitat, but the BLM could require mitigation measures to prevent unnecessary or undue degradation from mining operations. For example, the BLM

required seed collection of the Gierisch mallow by the mine operators to aid in reestablishing the species in reclaimed areas of the Black Rock Gypsum Mine in the recently approved expansion of the Black Rock Gypsum Mine.

The BLM has required seed collection as a result of these operations; however, we do not know if enough seeds can be collected to reestablish pre-mining population numbers in reclaimed areas. We are unsure of the ability to reestablish healthy populations in reclaimed areas because the number of plants observed growing from the seed bank in reclaimed soils has decreased since they were first observed. Furthermore, we do not know the long-term viability of these plants or any plants grown from collected seeds. Therefore, we find that the BLM Federal regulatory measures are not adequate to address the loss of habitat caused by gypsum mining.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Small Population Size

As previously described (see the *Biology, Habitat, and the Current Range* section), the entire range of the Gierisch mallow is located in an area of less than 186 ha (460 ac) throughout Arizona and Utah. Within this range, each of the 18 individual populations' habitat areas is very small, ranging from 0.003 ha (0.01 ac) to 38.12 ha (94.36 ac). The Gierisch mallow can be dominant in small areas of suitable habitat, containing thousands of individuals. However, the small areas of occupation and the narrow overall range of the species make it highly susceptible to stochastic events that may lead to local extirpations.

Mining, or a single random event such as a wildfire (see Factor A), could extirpate an entire or substantial portion of a population given the small area of occupied habitat. Species with limited ranges and restricted habitat requirements also are more vulnerable to the effects of global climate change (see the "Climate Change and Drought" section below; IPCC 2002, p. 22; Jump and Penuelas 2005, p. 1016; Maschinski *et al.* 2006, p. 226; Krause 2010, p. 79).

Overall, we consider small population size and restricted range intrinsic vulnerabilities to the Gierisch mallow that may not rise to the level of a threat on its own. However, the small population sizes and restricted range of this species increase the risk of extinction to the Gierisch mallow populations in conjunction with the effects of global climate change (see below) and the potential for stochastic extinction events such as mining and

invasive species (Factor A). Therefore, we consider the small, localized population size to exacerbate the threats of mining, invasive species, and climate change to the species.

Climate Change and Drought

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms “climate” and “climate change” are defined by the Intergovernmental Panel on Climate Change (IPCC). “Climate” refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term “climate change” thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Annual mean precipitation levels are expected to decrease in western North America and especially the southwestern States by mid-century (IPCC 2007, p. 8; Seager *et al.* 2007, p. 1181). Throughout the Gierisch mallow's range, precipitation is predicted to increase 10 to 15 percent in the winter, decrease 5 to 15 percent in spring and summer, and remain unchanged in the fall under the highest emissions scenario (Karl *et al.* 2009, p. 29). The levels of aridity of recent drought conditions and perhaps those of the 1950s drought years will become the new climatology for the southwestern United States (Seager *et al.* 2007, p. 1181). Much of the Southwest remains in a 10-year drought, which is considered the most severe western drought of the last 110 years (Karl *et al.* 2009, p. 130). Although droughts occur more frequently in areas with minimal precipitation, even a slight reduction from normal precipitation may lead to severe reductions in plant production (Herbel *et al.* 1972, p. 1084). Therefore, the smallest change in environmental

factors, especially precipitation, plays a decisive role in plant survival in arid regions (Herbel *et al.* 1972, p. 1084).

As discussed above, the Gierisch mallow has a limited distribution, and populations are localized and small. In addition, these populations are restricted to very specific soil types. Global climate change exacerbates the risk of extinction for species that are already vulnerable due to low population numbers and restricted habitat requirements. Predicted changes in climatic conditions include increases in temperature, decreases in rainfall, and increases in atmospheric carbon dioxide in the American Southwest (Walther *et al.* 2002, p. 389; IPCC 2007, p. 48; Karl *et al.* 2009, p. 129). Although we have no information on how the Gierisch mallow will respond to effects related to climate change, persistent or prolonged drought conditions are likely to reduce the frequency and duration of flowering and germination events, lower the recruitment of individual plants, compromise the viability of populations, and impact pollinator availability as pollinators have been documented to become locally extinct during periods of drought (Tilman and El Haddi 1992, p. 263; Harrison 2001, p. 64). The smallest change in environmental factors, especially precipitation, plays a decisive role in plant survival in arid regions (Herbel *et al.* 1972, p. 1084).

Drought conditions led to a noticeable decline in survival, vigor, and reproductive output of other rare and endangered plants in the Southwest during the drought years of 2001 through 2004 (Anderton 2002, p. 1; Van Buren and Harper 2002, p. 3; Van Buren and Harper 2004, entire; Hughes 2005, entire; Clark and Clark 2007, p. 6; Roth 2008a, entire; Roth 2008b, pp. 3–4). Similar responses are anticipated to adversely affect the long-term persistence of the Gierisch mallow. Periods of prolonged drought, especially with decreased winter rains essential to the survival and persistence of the Gierisch mallow, are likely to decrease the ability of this plant to produce viable seeds. Additionally, prolonged drought will likely diminish the ability of seeds currently in the seed bank to produce viable plants and for seedlings to survive to maturity.

Climate change is expected to increase levels of carbon dioxide (Walther *et al.* 2002, p. 389; IPCC 2007, p. 48; Karl *et al.* 2009, p. 129). Elevated levels of carbon dioxide lead to increased invasive annual plant biomass, invasive seed production, and pest outbreaks (Smith *et al.* 2000, pp. 80–81; IPCC 2002, pp. 18, 32; Ziska *et*

al. 2005, p. 1328) and will put additional stressors on rare plants already suffering from the effects of elevated temperatures and drought. This is important to note with regards to the Gierisch mallow because increases in nonnative, invasive plants, including increased seed production, are anticipated to increase both the frequency and intensity of wildfires as described above in “Nonnative, Invasive Species.” Additionally, these additional stressors associated with increased carbon dioxide are likely to increase the competition for resources between the Gierisch mallow and nonnative, invasive plant species.

The actual extent to which climate change itself will impact the Gierisch mallow is unclear, mostly because we do not have long-term demographic information that would allow us to predict the species' responses to changes in environmental conditions, including prolonged drought. Any predictions at this point on how climate change would affect this species would be speculative. However, as previously described, mining and recreation activities are threats (see “Mining” and “Recreation Activities” sections above), which will likely result in the loss of large numbers of individuals and maybe even entire populations. Increased surface disturbances associated with mining and recreation activities also will likely increase the extent and densities of nonnative invasive species and with it the frequencies of fires (see “Nonnative, Invasive Species” section above). Given the cumulative effects of the potential population reduction and habitat loss (of already small populations) associated with mining, recreation, invasive species, and fire, we are concerned about the impacts of future climate change to the Gierisch mallow.

In summary, the future effects of global climate change and drought on the Gierisch mallow are unclear. However, because of the threats of mining, grazing during drought years, recreation, and nonnative species, the cumulative effects of climate change and drought may be of concern for this species in the future. At this time, we believe that the state of knowledge concerning the localized effects of climate change and drought is too speculative to determine whether climate change and drought are a threat to these species in the future. However, we will continue to assess the potential threats of climate change and drought as better scientific information becomes available.

Summary of Factor E

We assessed the potential risks of small population size to the Gierisch mallow. The Gierisch mallow has a highly restricted distribution and exists in 18 populations scattered over an area that covers approximately 460 ac (186 ha). Individual populations occupy very small areas with large densities of plants. We conclude that stochastic events could impact a significant portion of a population. Small populations that are restricted by habitat requirements also are more vulnerable to the effects of climate change, such as prolonged droughts and increased fire frequencies. Although small population size and climate change make the species intrinsically more vulnerable, we are uncertain whether they would rise to the level of threat by themselves. However, when combined with the threats listed under Factor A (mining operations; livestock grazing; recreation activities; and nonnative, invasive species), and the lack of existing regulatory mechanisms to alleviate those threats, the small population size and restricted range of the Gierisch mallow are likely to significantly increase the level of the above-mentioned threats.

Proposed Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Gierisch mallow. We find that the species is in danger of extinction due to the current and ongoing modification and destruction of its habitat and range (Factor A) from the ongoing and future gypsum mining operations, livestock grazing, recreation activities, and nonnative, invasive species. The most significant factor threatening the Gierisch mallow is the ongoing and future gypsum mining that is likely to remove more than 50 percent of the total population of the Gierisch mallow. We did not find any significant threats to the species under Factor B. We found that predation (herbivory) during drought years to be a moderate threat (Factor C). We also found that existing regulatory mechanisms that could provide protection to the Gierisch mallow through mining operations management by the BLM and ASLD are inadequate to protect the species (Factor D) from existing and future threats. Finally, the small population size and restricted range of this species also puts it at a heightened risk of extinction (Factor E), due to the significant threats described above in Factors A, C, and D.

The threats acting upon the populations of Gierisch mallow are intensified because of the species' small population size and limited range, resulting in a high likelihood of extinction for this species. The Gierisch mallow is a narrow endemic species with a very restricted range; the small areas of occupied habitat combined with the species' strong association with gypsum soils makes the species highly vulnerable to habitat destruction or modification through mining-related and recreation activities as well as livestock grazing during drought and random extinction events, including invasive species (and the inherent risk of increased fires) and the potential future effects of global climate change (Factor A). Furthermore, two of the largest populations of the Gierisch mallow and its habitat will be completely removed by mining operations. Both of the mines have approved Mining Plans of Operations and permits from the respective land management agencies (BLM and ASLD); thus mining can occur at any time. Even though these mining operations are not currently active, when they begin operation there will be no requirement for notification of land-disturbing activities that would impact or completely remove these populations. As previously stated, operation and expansion of these two mines is anticipated to extirpate more than 50 percent of known Gierisch mallow plants, which are located in two populations in Arizona. The existing regulatory mechanisms are not adequate to protect the Gierisch mallow from the primary threat of mining, particularly because the BLM has approved mining operations with mitigation that we consider ineffective at reducing threats. Furthermore, the ASLD does not consider the presence of a listed species when approving a Mining Plan of Operation. The ASLD has the ability to require mitigation for the presence of a federally listed species; however, there is no current requirement because the Gierisch mallow is not federally listed. We consider this regulatory mechanism to be ineffective as well. The inadequacy of regulatory mechanisms (Factor D), combined with the expected turnaround of the housing market (gypsum is an important component of sheet rock for housing construction), poses a serious threat to the continued existence of the Gierisch mallow. The small, reduced range (Factor E) of the Gierisch mallow also puts it at a heightened risk of extinction.

The elevated risk of extinction of the Gierisch mallow is a result of the

cumulative stressors on the species and its habitat. For example, gypsum mining is anticipated to extirpate more than half of the known population of the Gierisch mallow, especially since the existing regulations cannot sufficiently mitigate the effects of gypsum mining in Gierisch mallow habitat. Livestock grazing throughout the range of the Gierisch mallow may affect the population viability of the remaining populations if periods of drought continue and livestock continue to consume the Gierisch mallow, including seedlings, during drought periods. Additionally, the risk of increased wildfire frequency and intensity resulting from increased nonnative, invasive species has the potential to extirpate several populations and, possibly, contribute to the extinction of the species. Climate change is anticipated to increase the drought periods and contribute to the spread of nonnative, invasive species as well. All of these factors combined heighten the risk of extinction and lead to our finding that the Gierisch mallow is in danger of extinction and warrants listing as an endangered species.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." The threats will not start having serious impact to the species in the future, which would be the case with a threatened species, but have already commenced, have been negatively impacting the species for some time, and will continue to do so into the foreseeable future. We find that the Gierisch mallow is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the threats described above. Therefore, on the basis of the best available scientific and commercial information, we propose listing the Gierisch mallow as endangered in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The Gierisch mallow proposed for listing in this rule is highly restricted in its range and the threats occur throughout its range. Therefore, we assessed the status of the species throughout its entire range. The threats to the survival of the species occur throughout the species' range and are not restricted to any particular

significant portion of that range. Accordingly, our assessment and proposed determination applies to the species throughout its entire range.

Listing the Gierisch mallow as a threatened species is not the appropriate determination because the ongoing threats described above are severe enough to increase the immediate risk of extinction. The gypsum mining operations are anticipated to resume full operations and expansions in as few as 3 to 10 years, although the mining operations could occur sooner. Grazing is ongoing throughout the range of the Gierisch mallow, and climate change is anticipated to cause more periods of drought, when livestock graze more heavily on the Gierisch mallow. Additionally, red brome and cheatgrass are abundant throughout the area, and while they are typically more abundant in the Gierisch mallow habitat after wet years, recent wet years have left an abundant crop of red brome in Gierisch mallow habitat. Wildfires could occur at any time as a result of the proliferation of these invasive species. All of these factors combined lead us to conclude that the threat of extinction is high and immediate, thus warranting a determination of endangered rather than threatened for the Gierisch mallow.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this

process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprised of species experts, Federal and State agencies, non-government organizations, and stakeholders) are often established to develop recovery plans. If this proposed rule is made final, when completed, the recovery outline, draft recovery plan, and the final recovery plan would be available on our Web site (<http://www.fws.gov/endangered>), or from our Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, under to section 6 of the Act, the State of Arizona would be eligible for Federal funds to implement management actions that promote the protection and recovery of the Gierisch mallow. Information on our grant programs that are available to aid

species recovery can be found at:

<http://www.fws.gov/grants>.

Although the Gierisch mallow is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **ADDRESSES**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both, as described in the preceding paragraph, include management and any other landscape-altering activities on Federal lands administered by the BLM, such as mining operations, livestock grazing, and issuing special use permits.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants

in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

This species is currently protected by the Arizona Native Plant Act (ANPA). Since it became a candidate species in 2008, Arizona protects the Gierisch mallow as “Highly Safeguarded.” Plants in the “Highly Safeguarded” category under the ANPA include “plants resident to this State and listed as endangered, threatened, or category 1 in the Federal endangered species act of 1973” (ANPA 1997, p. 4). The ANPA controls collecting, and limited scientific collection of “Highly Safeguarded” species is allowed (Austin 2012, p. 1), but the ANPA provides no protection for plant habitat. Protection under the Act as an endangered species will, therefore, offer additional protections to this species.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62 for endangered plants, and at 17.72 for threatened plants. With regard to endangered plants, a permit must be issued for the following purposes: enhancement of propagation or survival of the species.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive: Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service,

Endangered Species Permits, Southwest Regional Office, P.O. Box 1306, Albuquerque, NM, 87103–1306; telephone (505) 248–6911; facsimile (505) 248–6915.

Critical Habitat

Prudency Determination

Section 4 of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species; or (2) the designation of critical habitat would not be beneficial to the species.

There is no indication that the Gierisch mallow threatened by collection, and there are no likely increases in the degree of threats to the species if critical habitat were designated. This species is not the target of collection, and the areas we propose for designation either have restricted public access (mine sites) or are already readily open to the public (BLM land). None of the threats identified to the species are associated with human access to the sites, with the exception of the threats associated with recreational activities on BLM land. This threat, or any other identified threat, is not expected to increase as a result of critical habitat designation because the BLM cannot control unauthorized recreational activities, and the designation of critical habitat would not change the situation.

In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits of critical habitat to the Gierisch mallow include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur, because, for example, Federal agencies were not aware of the potential impacts of an action on the species; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments, or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we

have determined that the designation of critical habitat would not likely increase the degree of threat to any of the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the Gierisch mallow.

Background

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for the Gierisch mallow in this section of the proposed rule. For a complete description of the life history and habitat needs of the Gierisch mallow, see the *Species Information* section above.

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public

to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographic area occupied by the species at the time it was listed (in this case, currently occupied areas) are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements (PCEs) are the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographic area occupied by the species at the time it is listed (in this case, outside currently occupied areas), upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographic area occupied by a species only when a designation limited to its range would be inadequate

to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. If we list the Gierisch mallow, areas that are important to the conservation of the species, both inside and outside the critical habitat designation, would continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical

habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools would continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation would not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographic area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, or rearing (or development) of offspring; and
- (5) Habitats that are protected from disturbance or are representative of the historical, geographic, and ecological distributions of a species.

We derive the specific physical or biological features required for the Gierisch mallow from studies of this species' habitat, ecology, and life history as described below. We have determined that the following physical or biological features are essential for the Gierisch mallow.

Space for Individual and Population Growth and for Normal Behavior

The Gierisch mallow has a limited distribution; it is only found in a small area in Utah and Arizona. Within these areas, the Gierisch mallow requires appropriate soils, associated formations, slope, drainage, and plant community types within the landscape to provide space for individual growth and to provide food, water, air, light, minerals, or other nutritional or physiological requirements. In both Arizona and Utah, the Gierisch mallow is found in gypsiferous outcrops of the Harrisburg Member of the Kaibab Formation. In Arizona, these sites may be affiliated

with the following gypsiferous soil series:

- Nikey-Ruesh complex,
- Gypill-Hobog complex,
- Hobog-Tidwell complex,
- Hobog-Grapevine complex,
- Grapevine-Shelly complex,
- Hindu-Rock outcrop-Gypill complex,
- Cave-Harrisburg-Grapevine complex, and
- Grapevine-Hobcan complex (Service unpublished data).

Sites in Utah are most affiliated with the following soil series (Service unpublished data, 2012, p. 1):

- Badland
- Fluvaquents and Torrifluvents, and
- Riverwash.

The Gierisch mallow occurs at elevations from 821 to 1,148 m (2,694 to 3,766 ft) in Arizona and from 755 to 861 m (2,477 to 2,825 ft) in Utah. We could not correlate the Gierisch mallow occurrences to a specific range of slopes; therefore, topography is not considered to be an essential physical feature for this species (Service unpublished data, 2012).

The Gierisch mallow occurs in sparsely vegetated, warm desert communities. All occupied habitat

throughout its range occurs within the landcover described as Mojave mid-elevation mixed desert scrub (NatureServe 2011, p. 2). This classification represents the extensive desert scrub in the transition zone above the *Larrea tridentata* (creosote)–*Ambrosia dumosa* (white bursage) desert scrub and below the lower montane woodlands from 700 to 1800 m (2,296 to 5,905 ft) that occur in the eastern and central Mojave Desert. The vegetation within this ecological system is quite variable. A list of common plants associated with the Gierisch mallow habitat is included in Table 2.

TABLE 2—VEGETATION ASSOCIATED WITH THE GIERISCH MALLOW HABITAT (NATURESERVE 2011, P. 2)

Codominant and diagnostic species	Woody plant species associates	Other common nonwoody species associates
<i>Coleogyne ramosissima</i> (Blackbrush).	<i>Acacia greggii</i> (Catclaw acacia)	<i>Achnatherum hymenoides</i> (Indian ricegrass).
<i>Eriogonum fasciculatum</i> (Buckwheat).	<i>Canotia holacantha</i> (Crucifixion thorn)	<i>A. speciosum</i> (Desert needlegrass).
<i>Ephedra nevadensis</i> (Nevada jointfir).	<i>Ephedra nevadensis</i> (Nevada jointfir)	<i>Muhlenbergia porteri</i> (Bush muhly).
<i>Grayia spinosa</i> (Spiny hopsage).	<i>Ephedra torreyana</i> (Desert Mormon tea)	<i>Eriogonum</i> sp. (Various annual buckwheats).
	<i>Encelia farinosa</i> (Brittlebush)	<i>Pleuraphis jamesii</i> (James' galleta).
	<i>Purshia stansburiana</i> (Stansbury cliffrose)	<i>Poa secunda</i> (Sandberg bluegrass).
	<i>Gutierrezia sarothrae</i> (Broom snakeweed).	

Depending on the moisture regime, the Gierisch mallow also can be associated with native annuals that are often ephemeral (seen only in the spring) and, like many Mohave Desert plant species, seasonally abundant based on climatic conditions.

Therefore, based on the information above, we identify gypsum soils found in the Harrisburg Member of the Kaibab Formation from 755 to 1,148 m (2,477 to 3,766 ft) and with the appropriate native vegetation communities to be an essential physical or biological feature for this species.

Sites for Reproduction, Germination, Seed Dispersal or Pollination

The Gierisch mallow is a native species of sparsely vegetated, warm desert communities. Although we do not know how the species is pollinated, other species of the genus *Sphaeralcea* (globemallows) are pollinated by *Diadasia diminuta* (globemallow bee), which specializes in pollinating plants of this genus. Globemallow bees are considered important pollinators for globemallows (Tepedino 2010, p. 2). These solitary bees, as well as other *Diadasia* species, are known to occur within the range of the Gierisch mallow (Sipes and Tepedino 2005, pp. 490–491; Sipes and Wolf 2001, pp. 146–147), so it is reasonable to assume that they are

potential pollinators of the Gierisch mallow and other associated vegetation in the surrounding community. The globemallow bee, along with other solitary bees, nest in the ground, and nests are commonly found in partially compacted soil along the margins of dirt roads in the western United States (Tepedino 2010, p. 1). It is important to protect those nesting sites and associated natural habitat for the globemallow bee and other potential pollinators.

Natural habitat for the globemallow bee and other potential pollinators includes those appropriate vegetation communities described above in Table 2. The lack of favorable natural habitat can negatively influence pollination productivity (Kremen *et al.* 2004, pp. 1116–1117). Sites for the Gierisch mallow's reproduction, germination, and seed dispersal, and pollination providers are found within the communities described above. Because the Gierisch mallow is potentially pollinated by globemallow bees and other insects, the presence of pollinator populations is essential to the conservation of the species. Preservation of the mix of species and interspecific interactions they encompass greatly improves the chances for survival of rare species in their original location

and habitat (Tepedino *et al.* 1996, p. 245). Redundancy of pollinator species is important because a pollinator species may be abundant one year and less so the next year. Maintaining a full suite of pollinators allows for the likelihood that another pollinator species will stand in for a less abundant one, and is essential in assuring adequate pollination.

Bees have a limited foraging range strongly correlated to body size (Greenleaf, 2005, p. 17; Steffan-Dewenter and Tscharntke 1999, pp. 434–435). Fragmentation of habitat can result in isolating plants from pollinator nesting sites. When the distance between plants and the natural habitats of pollinators increases, plant reproduction (as measured by mean seed set) can decline by as much as 50 percent in some plant species (Steffan-Dewenter and Tscharntke 1999, pp. 435–436). Optimal pollination occurs when there is abundance of individual pollinators and a species-rich bee community (Greenleaf 2005, p. 47).

Greenleaf (2005, p. 15) defines the typical homing distance of a bee taxon as the distance at which 50 percent of individual bees of that taxon have the ability to return to their home (nest, etc.). Solitary bees of various species have been documented to have foraging distances ranging from 150 m (492 ft) to

1,200 m (3,937 ft) (Gathmann and Tschamtko 2002, p. 760; Greenleaf *et al.* 2007, p. 593).

Therefore, based on the information above, we identify pollinators and associated appropriate native plant communities within 1,200 m (3,937 ft) of occupied sites to be an essential physical or biological feature for this species.

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

The species' known range has not contracted or expanded since the species was described in 2002. All sites contribute to ecological distribution and function for this species by providing representation across the species' limited current range. It is important to minimize surface-disturbing activities throughout the limited range of the Gierisch mallow. Surface disturbing activities, such as mining and recreation activities (OHV and impacts related to target shooting), remove the unique soil composition and associated vegetation communities that the Gierisch mallow needs.

Additionally, it is important to have areas in all the units free of nonnative, invasive species, such as red brome and cheatgrass. As previously discussed in Factor A, above, both cheatgrass and red brome tend to not grow well in gypsum outcrops in normal (dry) rainfall years; however, they can be abundant in Gierisch mallow habitat during wet years. Invasions of annual, nonnative species, such as cheatgrass, are well documented to contribute to increased fire frequencies (Brooks and Pyke 2002, p. 5; Grace *et al.* 2002, p. 43; Brooks *et al.* 2003, pp. 4, 13, 15). The disturbance caused by increased fire frequencies creates favorable conditions for increased invasion by cheatgrass. The end result is a downward spiral, where an increase in invasive species results in more fires, more fires create more disturbances, and more disturbances lead to increased densities of invasive species. The risk of fire is expected to increase from 46 to 100 percent when the cover of cheatgrass increases from 12 to 45 percent or more (Link *et al.* 2006, p. 116). The invasion of red brome into the Mojave Desert of western North America poses similar threats to fire regimes, native plants, and other federally protected species (Brooks *et al.* 2004, pp. 677–678). Brooks (1999, p. 16) also found that high interspace biomass of red brome and cheatgrass resulted in greater fire danger in the Mojave Desert. Brooks (1999, p. 18) goes on to state that the ecological effects of cheatgrass and

red brome-driven fires are significant because of their intensity and consumption of perennial shrubs.

Imprecise forecasts of the impacts of climate change make the identification of areas that may become essential impractical at this time. Therefore, we have not identified additional areas outside those currently occupied where the species may move to, or be transplanted to, as a result of the impacts due to climate change.

Based on the information above, we identify areas free of disturbance and areas with low densities or absence of nonnative, invasive species to be an essential physical or biological feature for this species.

Primary Constituent Elements for the Gierisch Mallow

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the Gierisch mallow in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the Gierisch mallow are:

(1) Appropriate geological layers or gypsiferous soils, in the Harrisburg Member of the Kaibab Formation, that support individual Gierisch mallow plants or their habitat, within the elevation range of 775 to 1,148 m (2,477 to 3,766 ft). Appropriate soils are defined as:

- Badland,
- Fluvaquents and Torrifluvents,
- Riverwash,
- Cave-Harrisburg-Grapevine complex,
- Grapevine-Hobcan complex,
- Nikey-Ruesh complex,
- Gypill-Hobog complex,
- Hobog-Tidwell complex,
- Hobog-Grapevine complex,
- Grapevine-Shelly complex, and
- Hindu-Rock outcrop-Gypill complex.

(2) Appropriate Mojave desert scrub plant community and associated native species for the soil types at the sites listed in PCE 1.

(3) The presence of insect visitors or pollinators, such as the globemallow bee and other solitary bees. To ensure the

proper suite of pollinators are present, this includes habitat that provides nesting substrate for pollinators in the areas described in PCE 2.

(4) Areas free of disturbance and areas with low densities or absence of nonnative, invasive plants, such as red brome and cheatgrass.

With this proposed designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the species, through the identification of primary constituent elements sufficient to support the life-history processes of the species. All units proposed to be designated as critical habitat are currently occupied by the Gierisch mallow and contain the primary constituent elements sufficient to support the life-history needs of the species.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographic area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of this species may require special management considerations or protection to reduce the direct and indirect effects associated with the following threats: Habitat loss and degradation from mining operations; livestock grazing; recreation activities; and invasive plant species. Please refer to Factor A above for a complete description of these threats.

Special management to protect the features essential to the conservation of the species from the effects of gypsum mining include creating managed plant preserves and open spaces, limiting disturbances to and within suitable habitats, and evaluating the need for and conducting restoration or revegetation of native plants in open spaces or plant preserves containing similar gypsum soils. Management activities that could ameliorate these threats include (but are not limited to) seed collection from the Gierisch mallow throughout its range, including those plants within the footprint of each mine. These seeds could be used to begin propagation studies to determine the long-term viability of plants growing in reclaimed soils. Additionally, these seeds could be used to begin propagating plants to be planted in other gypsum deposits and to augment existing populations. Special management may be necessary to

protect features essential to the conservation of the Gierisch mallow from livestock grazing, including fencing populations; avoiding activities, such as water trough placement, that might concentrate livestock near or in occupied habitat; and removing livestock from critical habitat during the species' growing and reproductive seasons, especially during periods of flowering and fruiting. Special management that may be necessary to protect the features essential to the conservation of the Gierisch mallow from recreational activities includes directing recreational use away from and outside of critical habitat, fencing small populations, removing or limiting access routes, ensuring land use practices do not disturb the hydrologic regime, and avoiding activities that might concentrate water flows or sediments into critical habitat.

Additionally, threats related to both control of nonnative, invasive species and fire suppression and fire-related activities resulting from the spread of nonnative, invasive species include:

- Crushing and trampling of plants from fire suppression and treatment activities;
- Damage to seedbank as a result of fire severity;
- Soil erosion; and
- An increase of invasive plant species that may compete with native plant species as a result of wildfires removing non-fire-adapted native plant species or as a result of fire suppression equipment introducing invasive plant species.

Criteria Used To Identify Critical Habitat

Geographic Range Occupied at the Time of Listing

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are proposing to designate critical habitat in areas within the geographic area occupied by the species as described above in the proposed rule to list the Gierisch mallow and that contain one or more of the identified primary constituent elements. We are not currently proposing to designate any areas outside the geographic area occupied by the

species, because occupied areas are sufficient for the conservation of the species.

Our rationale for not including areas outside of the geographic range of Gierisch mallow is twofold. One, the areas designated as occupied contain the physical and biological features essential for the species. Secondly, within the overall geographic range of the species, there are some areas or patches devoid of plants, as one would expect. Therefore, it follows that within the critical habitat units we are proposing, there are areas without the plant growing in them. Thus, even though all units are occupied when considering the appropriate scale for critical habitat designation, there is still room for more plants to grow. This should provide room for expansion of the existing populations. Should recovery planning for this species include actions to augment or establish additional populations, the proposed critical habitat units will provide for enough habitat to allow for those activities. Therefore, we conclude that additional areas outside of the geographic range of the Gierisch mallow are not needed to conserve the species.

There is no information on the historical range of this species; however, it is possible that the gypsum hills supported populations of the Gierisch mallow before active mining (and removal of the gypsum) began, but there is no information that the species occurred outside of its current range. Currently, there are 18 known populations restricted to less than approximately 186 ha (460 ac) in Arizona and Utah, combined. The main populations in Arizona are located south of the Black Knolls, approximately 19.3 km (12 mi) southwest of St. George, Utah, with the southernmost population of this group being on the edge of Black Rock Gulch near Mokaac Mountain. There is another population approximately 4.8 km (3 mi) north of the Black Knolls, on ASLD lands near the Arizona/Utah State line. The Utah population is located on BLM lands within 3.2 km (2 mi) of the Arizona/Utah State line, near the Arizona population on ASLD land. Gypsum outcrops associated with the Harrisburg Member are scattered throughout BLM lands in northern Arizona and southern Utah. Extensive surveys were conducted in these areas because numerous other rare plant species are associated with these landforms. Gierisch mallow plants were not located in any other areas beyond what is currently known and described above (Atwood 2008, p. 1). In identifying proposed critical habitat

units for Gierisch mallow, we proceeded through a multi-step process.

Mapping

We obtained records of Gierisch mallow distribution from BLM's Arizona Strip Field Office, BLM's St. George Field Office, and both published and unpublished documentation from our files. This information included BLM hand-mapped polygons that outlined Gierisch mallow habitats in Arizona and Utah.

For all areas, survey data from 2001 to 2011 were available and evaluated to identify the extent of occupied habitat (provided by BLM). Although occupied sites may gradually change, recent survey results confirm that plant distribution is similar to observed distributions over the last 10 years.

Our approach to delineating critical habitat units was applied in the following manner:

(1) We overlaid Gierisch mallow locations into a GIS database. This provided us with the ability to examine slope, aspect, elevation, vegetation community, and topographic features, such as drainages in relation to the locations of Gierisch mallow on the landscape. The locations of Gierisch mallow, and their relationship to landscape features, verified our previous knowledge of the species and slightly expanded the previously recorded elevation ranges for Gierisch mallow. We examined Gierisch mallow locations in an attempt to identify any correlation with aspect, slope, and occurrence location for this species; however we found no such correlation.

To better understand the relationship of the Gierisch mallow locations to specific soils, we also examined soil series layers, aerial photography, and hardcopy geologic maps. For Gierisch mallow, we analyzed soil survey layers. For Gierisch mallow locations in Utah, we found that 26.02 percent of all individuals rangewide (AZ and UT) are associated with Badland, and 0.03 percent of all individuals are associated with Fluvaquents and Torrifluvents soil complexes. In Arizona, we found that occupied sites are associated with the following soil types (percentages are rangewide):

- Nikey-Ruesh complex (3.14 percent),
- Gypill-Hobog complex (65.94 percent),
- Hobog-Tidwell complex (3.53 percent),
- Hobog-Grapevine complex (0.85 percent),
- Grapevine-Shelly complex (0.24 percent), and

• Hindu-Rock outcrop-Gypill complex (0.25 percent) (Service unpublished data).

This provided us with several polygons of occupied habitat spread across the above soil series.

(2) To further refine our critical habitat, we then included a 1,200 m (3,937 feet) buffer around the polygons of occupied habitat to ensure that all potential pollinators would have a sufficient land base to establish nesting sites and to provide pollinating services for Gierisch mallow, as described in *Primary Constituent Elements* above. Additionally, the 1,200 m (3,937 feet) buffer included three other gypsiferous soil types that also contain the necessary habitat for the Gierisch mallow. These soil types are the

- Riverwash,
- Cave-Harrisburg-Grapevine complex, and
- Grapevine-Hobcan complex.

(3) We then drew critical habitat boundaries that captured the locations, soils, and pollinator habitat elucidated under (1) and (2) above. Critical habitat designations were then mapped using

Albers Equal Area (Albers) North American Datum 83 (NAD 83) coordinates.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for Gierisch mallow. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are proposing for designation of critical habitat lands that we have determined areas occupied at the time of listing and contain sufficient elements of physical or biological features to support life-history processes essential for the conservation of the species. No lands outside of the geographic area occupied at the time of listing have been proposed for listing. The area included in both units is large enough and contains sufficient habitat to ensure the conservation of Gierisch mallow.

Proposed Critical Habitat Designation

We are proposing two units as critical habitat for Gierisch mallow. Both units are occupied and contain features that are essential to the conservation of Gierisch mallow. We mapped the units with a degree of precision commensurate with the available information and the size of the unit. The two areas we propose as critical habitat are the Starvation Point Unit and the Black Knolls Unit. The approximate area of each proposed critical habitat unit is shown in Table 3.

TABLE 3—PROPOSED CRITICAL HABITAT UNITS FOR GIERISCH MALLOW

[Area estimates reflect all land within critical habitat unit boundaries]

Critical Habitat unit	BLM AZ Federal	BLM UT Federal	AZ State Lands	Totals
Unit 1. Starvation Point	0	1,022 ha (2,526 ac)	316 ha (782 ac)	1,339 ha (3,309 ac).
Unit 2. Black Knolls	3,586 ha (8,862 ac)	0	263 ha (651 ac)	3,850 ha (9,513 ac).
Totals	3,586 ha (8,862 ac)	1,022 ha (2,526 ac)	580 ac (1,434 ac)	5,189 ha (12,822 ac).

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for Gierisch mallow, as follows.

Unit 1: Starvation Point

This unit consists of approximately 1,339 ha (3,308.7 ac) and occurs on land managed by both Utah BLM (1,022 ha; 2,526.46 ac) and ASLD (316 ha; 782.24 ac). This unit was occupied at the time of listing and contains the features essential to the conservation of the species. Unit 1 contains two Gierisch mallow populations, including the second largest population. Unit 1 is located west of I-15 as this highway crosses the State line of Arizona and Utah, and is bounded by the Virgin River to the west and I-15 to the south and east.

The features essential to the conservation of the species may require special management considerations or protection to control invasive plant species, to control habitat degradation due to the recreation and mining

activities that disrupt the soil composition, and to maintain the identified associated vegetation and pollinators essential to the conservation of the species. The portion of habitat that occurs on ASLD occurs within the footprint of the Georgia-Pacific Mine, which could resume gypsum mining operations in the near future. Grazing, which can modify the primary constituent elements and may require special management, typically occurs outside of the growing season for Gierisch mallow in the one pasture on BLM land within this unit; however, recent wildfires in adjacent pastures in this allotment have resulted in livestock grazing occurring into the spring growing season for Gierisch mallow. These recently burned pastures have since been rehabilitated, and livestock grazing is anticipated to return to its normal grazing rotation of November 1 to February 28 in the future (Douglas 2012, p. 1).

Unit 2: Black Knolls

This unit consists of approximately 3,850 ha (9,513.30 ac) and occurs on land managed by both Arizona BLM (3,586.28 ha; 8,861.90 ac) and ASLD (263.62 ha; 651.41 acres). This unit is occupied at the time of listing and contains the features essential to the conservation of the species. Unit 2 contains the remaining 16 Gierisch mallow populations, including the largest population. Unit 2 is located south of I-15 as this highway crosses the State line of Arizona and Utah, and is bounded by Black Rock Gulch to the west and Mokaac Mountain to the south and east.

The features essential to the conservation of the species may require special management considerations or protection to control invasive plant species, to control habitat degradation due to mining activities that disrupt the soil composition, and to maintain the identified associated vegetation and pollinators essential to the conservation

of the species. The largest population of Gierisch mallow occurs in the area of the proposed expansion of the Black Rock Gypsum Mine. As described in the proposed listing discussion above, grazing on BLM AZ lands typically occurs during the growing season for Gierisch mallow on all three BLM AZ allotments and is expected to modify the primary constituent elements, although some of the pastures are in a rest/rotation system in which a pasture may see an entire year of rest before being grazed again.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of “destruction or adverse modification” (50 CFR 402.02) (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action

(such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

- (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or
- (2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define “reasonable and prudent alternatives” (at 50 CFR 402.02) as alternative actions identified during consultation that:

- (1) Can be implemented in a manner consistent with the intended purpose of the action,
- (2) Can be implemented consistent with the scope of the Federal agency’s legal authority and jurisdiction,
- (3) Are economically and technologically feasible, and
- (4) Would, in the Director’s opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency’s discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to

request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the “Adverse Modification” Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for Gierisch mallow. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Gierisch mallow. These activities include, but are not limited to, actions that would significantly alter soil composition that Gierisch mallow requires, including but not limited to mining operations, livestock grazing, and special use permits for recreation activities.

Exemptions

Application of Section 4(a)(3) of the Act

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: “The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.”

There are no Department of Defense lands within the proposed critical habitat designation.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors. Potential land use sectors that may be affected by the critical habitat designation include mining, livestock operations, and OHV use, and recreation activities. We also consider any social impacts that might occur because of the designation.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At

that time, copies of the draft economic analysis will be available for downloading from the Internet at <http://www.regulations.gov>, or by contacting the Arizona Ecological Services Field Office directly (see **FOR FURTHER INFORMATION CONTACT**). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Gierisch mallow are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not propose to exert his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any habitat conservation plans or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

We are not proposing any exclusions at this time from the proposed critical habitat designation under section 4(b)(2) of the Act based on partnerships, management, or protection afforded by cooperative management efforts.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure

that our proposed listing and critical habitat designation are based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed rule.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq.) as amended

by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and Executive Order 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination.

We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. Therefore, this action is not a

significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that

otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because the lands being proposed for critical habitat designation are owned by the State of Arizona and the BLM. Neither of these government entities fit the definition of “small governmental jurisdiction.” Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we will analyze the potential takings implications of designating critical habitat for Gierisch mallow in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Arizona and Utah. The designation of critical habitat in areas currently occupied by the Gierisch mallow imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their

activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard mapping technology and identifies the elements of physical or biological features essential to the conservation of the Gierisch mallow within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.), need not be prepared Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of Gierisch mallow, under the Tenth Circuit ruling in *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for this proposal when it is finished.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized,
- (2) Use the active voice to address readers directly,
- (3) Use clear language rather than jargon,
- (4) Be divided into short sections and sentences, and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands that are occupied by the Gierisch mallow that contain the features essential for conservation of the species, and no tribal lands unoccupied by the Gierisch mallow that are essential for the conservation of the species. Therefore, we are not proposing to designate critical habitat for the Gierisch mallow on tribal lands.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0049 and upon request from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Arizona Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding an entry for “*Sphaeralcea gierischii*” to the

List of Endangered and Threatened Plants in alphabetical order under “Flowering Plants.”

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
<i>Sphaeralcea gierischii.</i>	Gierisch mallow	U.S.A (AZ, UT)	Malvaceae	E	.....	17.96(a)	NA
*	*	*	*	*	*		*

3. In § 17.96, amend paragraph (a) by adding an entry for “*Sphaeralcea gierischii* (Gierisch mallow),” in alphabetical order under the family Malvaceae, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Malvaceae: *Sphaeralcea gierischii* (Gierisch mallow)

(1) Critical habitat units are depicted for Washington County, Utah, and Mohave County, Arizona, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of Gierisch mallow consist of the following components:

(i) Appropriate geological layers or gypsiferous soils, in the Harrisburg Member of the Kaibab Formation, that support individual Gierisch mallow plants or their habitat, within the elevation range of 775 to 1,148 m (2,477 to 3,766 ft). Appropriate soils are defined as:

(A) Badland,

(B) Fluvaquents and Torrifluvents, (C) Riverwash, (D) Cave-Harrisburg-Grapevine complex,

(E) Grapevine-Hobcan complex,

(F) Nikey-Ruesh complex,

(G) Gypill-Hobog complex,

(H) Hobog-Tidwell complex,

(I) Hobog-Grapevine complex,

(J) Grapevine-Shelly complex, and

(K) Hindu-Rock outcrop-Gypill complex.

(ii) Appropriate Mojave desert scrub plant community and associated native species for the soil types at the sites listed in paragraph (2)(i) of this entry.

(iii) The presence of insect visitors or pollinators, such as the globemallow bee and other solitary bees. To ensure the proper suite of pollinators are present, this includes habitat that provides nesting substrate for pollinators in the areas described in paragraph (2)(ii) of this entry.

(iv) Areas free of disturbance and areas with low densities or absence of nonnative, invasive plants, such as red brome and cheatgrass.

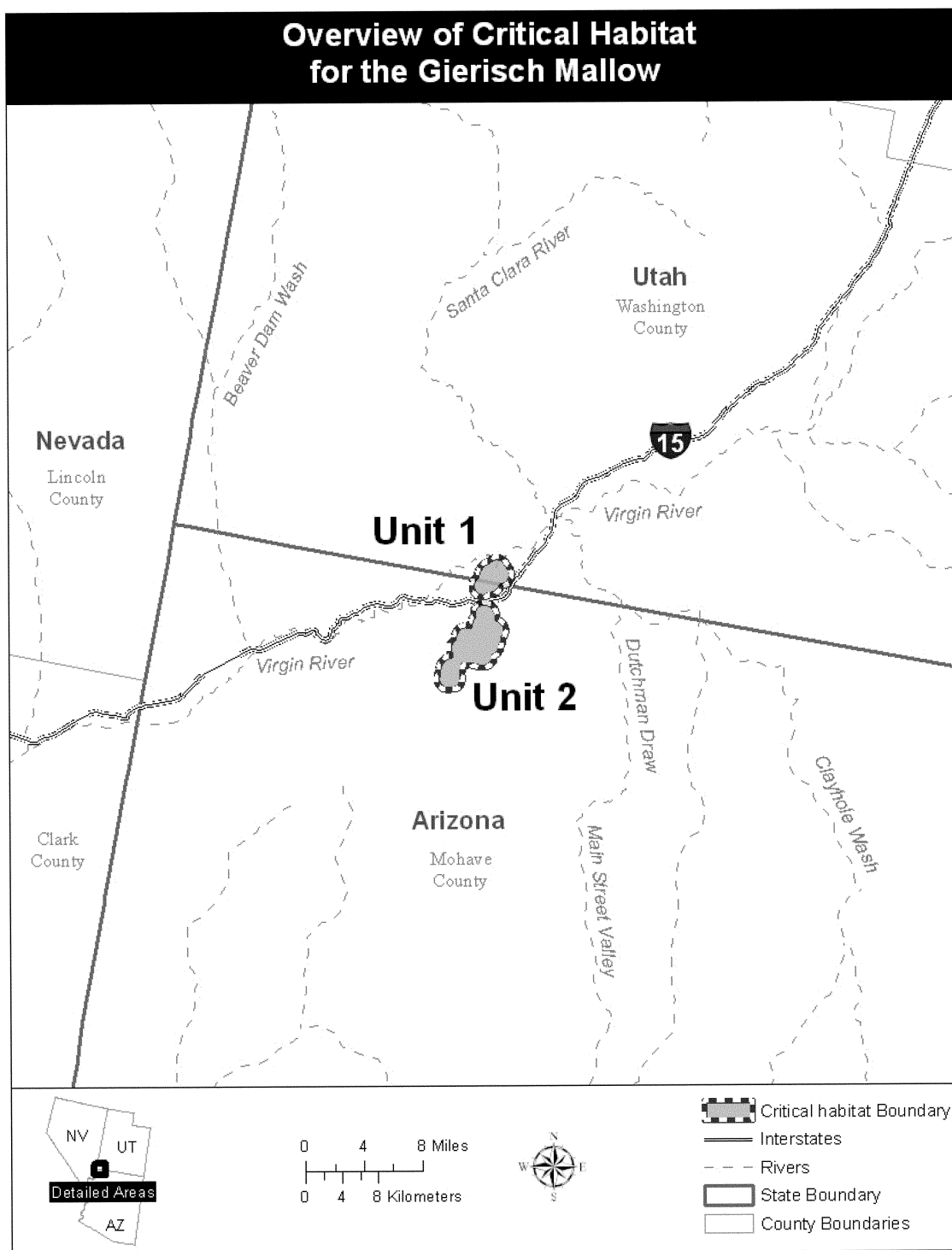
(3) Critical habitat does not include manmade structures (such as buildings,

aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created using Albers Equal Area (Albers) North American Datum 83 (NAD 83) coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service’s Internet site (<http://www.fws.gov/southwest/es/Arizona/>), Regulations.gov (<http://www.regulations.gov>), at Docket No. FWS–R2–ES–2012–0049, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

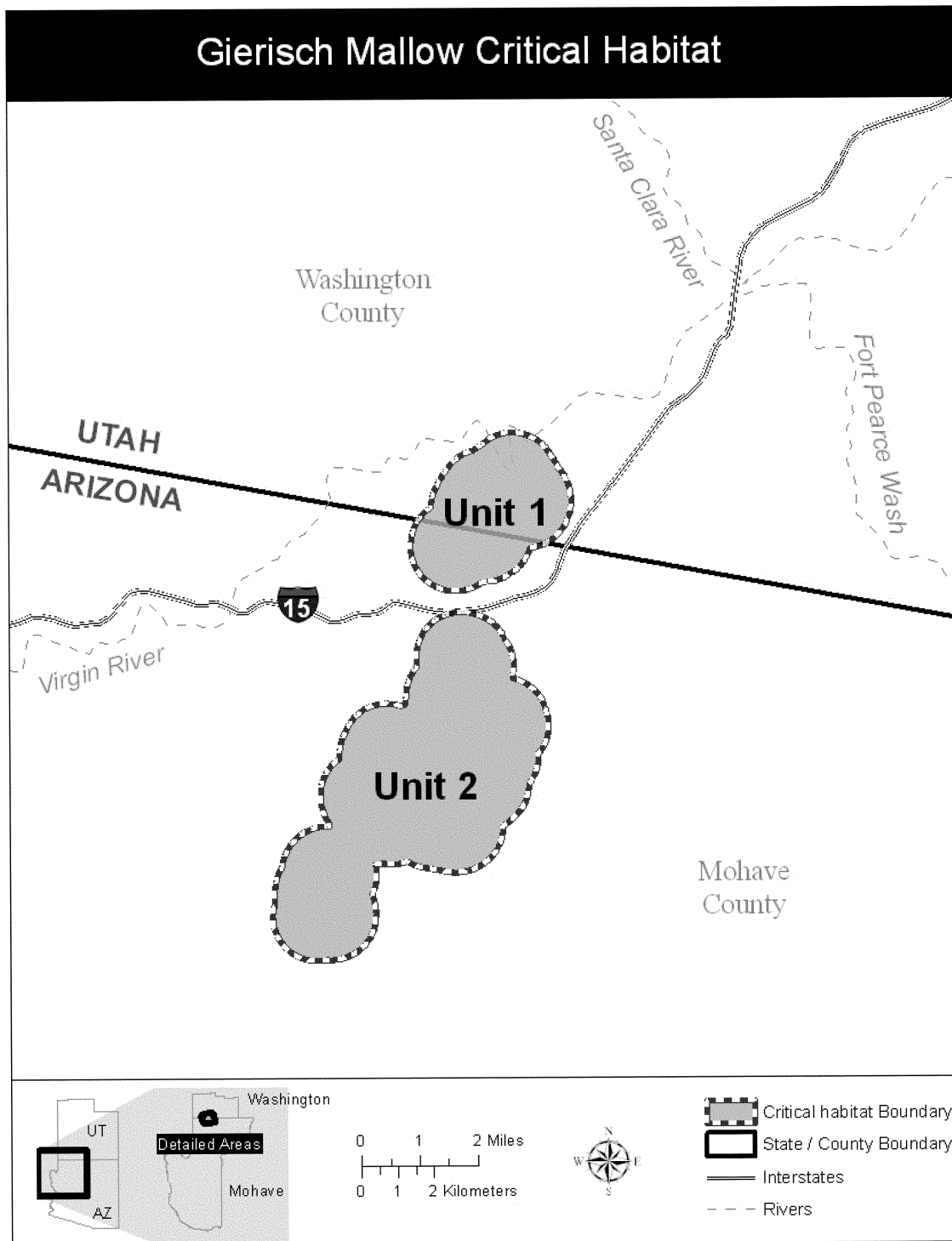
(5) Index map follows:

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(6) Unit 1: Starvation Point Unit,
Mohave County, Arizona, and

Washington County, Utah. Map of Units
1 and 2 follows:



(7) Unit 2: Black Knolls Unit, Mohave County, Arizona. Map of Units 1 and 2

is provided at paragraph (6) of this entry.

* * * * *

Dated: August 6, 2012.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Seismic Survey in the Beaufort and Chukchi Seas, Alaska; Notice

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN 0648–XC091

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Seismic Survey in the Beaufort and Chukchi Seas, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS received an application from ION Geophysical (ION) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment only, incidental to a proposed marine seismic survey in the Beaufort and Chukchi Seas, Alaska, between October and December 2012. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to ION to take, by harassment, nine species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than September 17, 2012.

ADDRESSES: Comments on the application 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. The mailbox address for providing email comments is itp.guan@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 25-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#applications> 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 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#applications>. The following associated document is also available at the same internet address: Draft Plan of Cooperation. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An 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 U.S. can apply for a one-year authorization to incidentally take small numbers of marine mammals by harassment, provided that there is no potential for serious injury or mortality to result from the activity. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

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

NMFS received an application on March 1, 2012, from ION for the taking, by harassment, of marine mammals incidental to a marine seismic survey in ice in the Beaufort and Chukchi Seas, Alaska, during October through December 2012. After addressing comments from NMFS, ION modified its application and submitted a revised application on June 11, 2012. The June 11, 2012, application is the one available for public comment (see **ADDRESSES**) and considered by NMFS for this proposed IHA. ION also submitted IHA applications for essentially the same in-ice seismic survey activity in 2010 and 2011. However, in both years ION withdrew its applications due to logistical issues in carrying out such activities before NMFS published a notice of proposed IHA and request for public comments. Take by Level B harassment only of nine species of marine mammals is anticipated to result from the specified activity. ION has also requested authorization for Level A harassment of a few individuals of bowhead whale, beluga whale, and ringed seal.

Description of the Specified Activity

ION’s proposed activities consist of a geophysical in-ice (seismic reflection/refraction) survey and related vessel operations to be conducted primarily in the Alaskan Beaufort and Chukchi seas from October to December 2012. The primary survey area extends from the U.S.–Canadian border in the east to Point Barrow in the west. Two survey lines extend west of Point Barrow into the northern Chukchi Sea, and three short tie lines are proposed near the U.S.–Russian border (see Figure 1 of ION’s IHA application). The bathymetry of the proposed survey area ranges from shallow (<20 m [66 ft]) to relatively deep (≤3,500 m [11,483 ft]) water over the continental shelf, the continental slope, and the abyssal plain.

The survey would be conducted from the seismic vessel *Geo Arctic* escorted by the *Polar Prince*, a medium class (100A) icebreaker. The survey grid consists of ~7,175 km (4,458 mi) of transect line, not including transits

when the airguns are not operating. There may be small amounts of additional seismic operations associated with airgun testing, start up, and repeat coverage of any areas where initial data quality is sub-standard. The seismic source towed by the *Geo Arctic* would be an airgun array consisting of 26 active Sercel G-gun airguns with a total volume of 4,450 in³. A single hydrophone streamer 4.5–9 km (2.8–5.6 mi) in length, depending on ice conditions, would be towed by the *Geo Arctic* to record the returning seismic signals.

The survey vessels would access the survey area from Canadian waters in late September to begin data collection on or after October 1, 2012. After completion of the survey, or when ice and weather conditions dictate, the vessels would exit to the south, transiting through the Chukchi and Bering Seas. The *Polar Prince* may be used to perform an at-sea refueling (bunkering) operation to supply as much as 500 metric tons of Arctic diesel to the *Geo Arctic*. The *Polar Prince* would carry that fuel onboard at the start of the operation, and it would be transferred to the *Geo Arctic* if/when necessary. Depending on its own fuel consumption, the *Polar Prince* may then transit to Tuktoyuktuk, Canada to take on additional fuel for itself. Once the *Polar Prince* returns to the *Geo Arctic* the survey would continue. The entire refueling operation would therefore involve one fuel transfer and potentially one transit to and from Tuktoyuktuk. The refueling operation would likely take place in late October, at which time the *Geo Arctic* would likely be in the eastern or east-central Alaskan Beaufort Sea.

ION's geophysical survey has been designed and scheduled to minimize potential effects to marine mammals, bowhead whales in particular, and subsistence users. For mitigation and operational reasons, the survey area has been bisected by a line that runs from 70.5° N, 150.5° W, to 73° N, 148° W. (see Figure 1 of ION's IHA application). Weather and ice permitting, ION plans to begin survey operations east of the line described above (eastern survey area) and in offshore waters (>1,000 m [3,281 ft]) where bowheads are expected to be least abundant in early October. This operational plan is based on the fact that only ~2% of bowhead whales observed by Bureau of Ocean Energy Management's (BOEM) aerial surveys from 1979–2007 occurred in areas of water depth >1,000 m (3,281 ft) (MMS, 2010), and on average ~97% of bowheads have passed through the eastern U.S. Beaufort Sea by October 15

(Miller *et al.*, 2002). The survey would then progress to shallower waters in the eastern survey area before moving to the western survey area in late October or early November 2012.

Ice conditions are expected to range from open water to 10/10 ice cover. However, the survey cannot take place in thick multi-year ice as both the icebreaker and seismic vessel must make continuous forward progress at 3–4 kts. In order for the survey to proceed, areas of high ice concentration can only consist of mostly newly forming juvenile first year ice or young first year ice less than 0.5 m (1.6 ft) thick. Sounds generated by the icebreaker and seismic vessel moving through these relatively light ice conditions are expected to be far below the high sound levels often attributed to icebreaking. These high sound levels (>200 dB re 1 µPa [rms]) have been recorded from icebreakers during backing and ramming operations in very heavy ice conditions and are created by cavitation of the propellers as the vessel is slowed by the ice or reverses direction (Erbe and Farmer, 1998; Roth and Schmidt, 2010).

Acoustic Sources

(1) Seismic Airgun Array

The seismic source used during the project would be an airgun array consisting of 28 Sercel G-gun airguns, of which 26 would be active and have a total discharge volume of 4,450 in³. The 28 airguns would be distributed in two sub-arrays with 14 airguns per sub-array. Individual airgun sizes range from 70 to 380 in³. Airguns would be operated at 2,000 psi. The seismic array and a single hydrophone streamer 4.5–9 km (2.8–5.6 mi) in length would be towed behind the *Geo Arctic*. Additional specifications of the airgun array are provided in Appendix B of ION's IHA application.

(2) Echo Sounders

Both vessels would operate industry standard echo sounder/fathometer instruments for continuous measurements of water depth while underway. These instruments are used by all large vessels to provide routine water depth information to the vessel crew. Navigation echo sounders send a single, narrowly focused, high frequency acoustic signal directly downward to the sea floor. The sound energy reflected off the sea floor returns to the vessel where it is detected by the instrument, and the depth is calculated and displayed to the user. Source levels of navigational echo sounders of this type are typically in the 180–200 dB re 1 µPa-m (Richardson *et al.*, 1995a).

The *Geo Arctic* would use one navigational echo sounder during the project. The downward facing single-beam Simrad EA600 operates at frequencies ranging from 38 to 200 kHz with an output power of 100–2000 Watts. Pulse durations are between 0.064 and 4.096 milliseconds, and the pulse repetition frequency (PRF or ping rate) depends on the depth range. The highest PRF at shallow depths is about 40 pings per second. It can be used for water depths up to 4,000 m (13,123 ft) and provides up to 1 cm (0.4 in) resolution.

The *Polar Prince* would use one echo sounder, an ELAC LAZ-72. The LAZ-72 has an operating frequency of 30 kHz. The ping rate depends on the water depth and the fastest rate, which occurs in shallow depths, is about 5 pings per second.

Dates, Duration, and Region of Activity

The proposed geophysical survey would be conducted for ~76 days from approximately October 1 to December 15, 2012. Both the *Geo Arctic* and the *Polar Prince* would leave from Tuktoyuktuk, Canada, during late September and enter the Alaskan Beaufort Sea from Canadian waters. The survey area would be bounded approximately by 138° to 169° W, longitude and 70° to 73° N, latitude in water depths ranging from <20 to >3,500 m (66 to 11,483 ft) (see Figure 1 of ION's IHA application). For mitigation and operational reasons the survey area has been bisected by a line that runs from 70.5° N, 150.5° W to 73° N, 148° W. Weather and ice permitting, ION plans to begin survey operations east of the line (eastern survey area) in offshore waters (>1,000 m [3,281 ft]) where bowheads are expected to be least abundant in early October. The survey would then progress to shallower waters in the eastern survey area before moving to the west survey area in late October or early November. The vessels would depart the region to the south via the Chukchi and Bering Seas and arrive in Dutch Harbor in mid- to late December.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS jurisdiction most likely to occur in the seismic survey area include two cetacean species, beluga (*Delphinapterus leucas*) and bowhead whales (*Balaena mysticetus*), and two pinniped species, ringed (*Phoca hispida*) and bearded (*Erignathus barbatus*) seals. It is possible that some bowhead whales may be encountered as they migrate out of the area, particularly in the portion of the survey area where

water depths are <200 m (656 ft). Beluga whales are most likely to be encountered farther offshore than bowheads.

The ringed seal is the most abundant marine mammal in the proposed survey area. Although bearded seals typically migrate south in the fall, it is possible that small numbers of them may be present in the survey area. Most other marine mammal species have typically migrated south into the Chukchi and Bering Seas by the time this survey will take place. The polar bear is managed by the U.S. Fish and Wildlife Service (USFWS) and is not considered further in this proposed IHA notice.

Seven additional cetacean species have known occurrences within the proposed project area and some may occur in the area during the time of the proposed in-ice seismic survey: harbor porpoise (*Phocoena phocoena*); gray whale (*Eschrichtius robustus*); humpback whale (*Megaptera novaeangliae*); fin whale (*Balaenoptera physalus*); minke whale (*B. acutorostrata*); killer whale (*Orcinus orca*); and narwhal (*Monodon monoceros*). The gray whale occurs regularly in continental shelf waters along the Chukchi Sea coast in summer and to a lesser extent along the Beaufort Sea coast. Recent evidence from monitoring activities in the Chukchi and Beaufort Seas during industry seismic surveys suggests that the harbor porpoise and minke whale, which have been considered uncommon or rare in the Chukchi and Beaufort Seas, may be increasing in numbers in these areas (Funk *et al.*, 2010). Additional pinniped species under NMFS jurisdiction that could be encountered during the proposed geophysical in-ice survey include spotted (*P. largha*) and ribbon seals (*Histiophoca fasciata*). Spotted seals are more abundant in the Chukchi Sea and occur in small numbers in the Beaufort Sea. The ribbon seal is uncommon in the Chukchi Sea, and there are few reported sightings in the Beaufort Sea.

Small numbers of killer whales have also been recorded during recent industry surveys, along with a few sightings of fin and humpback whales. The narwhal occurs in Canadian waters and occasionally in the Beaufort Sea but is rare there and not expected to be encountered. Each of these species (killer, fin, and humpback whales and narwhal) is uncommon or rare in the Beaufort Sea, particularly during early winter, and relatively few if any encounters with these species are expected during the time period of the proposed seismic program.

The bowhead, humpback, and fin whales are listed as “endangered” under the Endangered Species Act (ESA) and as depleted under the MMPA. Certain stocks or populations of gray and beluga whales and spotted seals are listed as endangered or proposed for listing under the ESA; however, none of those stocks or populations occur in the proposed activity area. Additionally, the ribbon seal is considered a “species of concern”, meaning that NMFS has some concerns regarding status and threats of this species, but for which insufficient information is available to indicate a need to list the species under the ESA. On December 10, 2010, NMFS published a notice of proposed threatened status for subspecies of the ringed seal (75 FR 77476) and a notice of proposed threatened and not warranted status for subspecies and distinct population segments of the bearded seal (75 FR 77496) in the **Federal Register**. Neither of these two ice seal species is considered depleted under the MMPA.

Based on the occurrence of marine mammal species in the proposed project area and the time of year in which the survey is proposed to be conducted, NMFS is proposing to authorize take by harassment for the following species: Beluga, bowhead, gray, and minke whales; harbor porpoise; and ringed, bearded, spotted, and ribbon seals.

ION's application contains information on the status, distribution, seasonal distribution, and abundance of each of the species under NMFS jurisdiction mentioned in this document. Please refer to the application for that information (see **ADDRESSES**). Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The Alaska 2011 SAR is available at: <http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2011.pdf>.

Potential Effects of the Specified Activity on Marine Mammals

Operating active acoustic sources such as an airgun array, echo sounders, and icebreaking activities could potentially affect marine mammals.

Potential Effects of Airgun Sounds on Marine Mammals

The effects of sounds from airgun pulses might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, and, at least in theory, temporary or permanent hearing impairment or non-auditory effects (Richardson *et al.*, 1995). As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be

categorized as follows (based on Richardson *et al.*, 1995):

(1) Behavioral Disturbance

Marine mammals may behaviorally react when exposed to anthropogenic sound. These behavioral reactions are often shown as: changing durations of surfacing and dives; changing number of blows per surfacing; 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 noise sources are located; and/or flight responses (*e.g.*, pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. While many behavioral responses would not be expected to likely affect the fitness of an individual, other more severe behavioral modifications, especially in certain circumstances, could potentially have adverse effects on growth, survival, and/or reproduction. Some more potentially significant behavioral modifications include: drastic change in diving/surfacing patterns (such as those thought to be potentially associated with beaked whale stranding due to exposure to military mid-frequency tactical sonar) or longer-term habitat abandonment.

For example, at the Guerrero Negro Lagoon in Baja California, Mexico, which is one of the important breeding grounds for Pacific gray whales, shipping and dredging associated with a salt works may have induced gray whales to abandon the area through most of the 1960s (Bryant *et al.*, 1984). After these activities stopped, the lagoon was reoccupied, first by single whales and later by cow-calf pairs.

The onset of behavioral disturbance from anthropogenic sound, which is difficult to predict, depends on both external factors (*e.g.*, characteristics of sound sources and their paths) and the receiving animals (hearing, motivation, experience, demography) (Southall *et al.* 2007).

Currently NMFS uses 160 dB re 1 μ Pa (rms) received level for impulse noises (such as airgun pulses) as the threshold for the onset of Level B (behavioral) harassment.

In addition, behavioral disturbance is also expressed as the change in vocal activities of animals. For example, there is one recent summary report indicating that calling fin whales distributed in one part of the North Atlantic went

silent for an extended period starting soon after the onset of a seismic survey in the area (Clark and Gagnon, 2006). It is not clear from that preliminary paper whether the whales ceased calling because of masking, or whether this was a behavioral response not directly involving masking (*i.e.*, important biological signals for marine mammals being “masked” by anthropogenic sound; see below). Also, bowhead whales in the Beaufort Sea may decrease their call rates in response to seismic operations, although movement out of the area might also have contributed to the lower call detection rate (Blackwell *et al.*, 2009a; 2009b). Some of the changes in marine mammal vocal communication are thought to be used to compensate for acoustic masking resulting from increased anthropogenic noise (see below). For example, blue whales are found to increase call rates when exposed to seismic survey noise in the St. Lawrence Estuary (Di Iorio and Clark, 2009). Researchers have noted North Atlantic right whales (*Eubalaena glacialis*) exposed to high shipping noise increase call frequency (Parks *et al.*, 2007) and intensity (Parks *et al.*, 2010), while some humpback whales respond to low-frequency active sonar playbacks by increasing song length (Miller *et al.*, 2000). These behavioral responses could also have adverse effects on marine mammals.

Mysticete: Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable. Whales are often reported to show no overt reactions to airgun pulses at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances (reviewed in Richardson *et al.*, 1995; Gordon *et al.*, 2004). However, studies done since the late 1990s of migrating humpback and migrating bowhead whales show reactions, including avoidance, that sometimes extend to greater distances than documented earlier. Therefore, it appears that behavioral disturbance can vary greatly depending on context and not just received levels alone. Avoidance distances often exceed the distances at which boat-based observers can see whales, so observations from the source vessel can be biased. Observations over broader areas may be needed to determine the range of potential effects of some large-source seismic surveys where effects on cetaceans may extend to considerable distances (Richardson *et al.*, 1999; Moore and Angliss, 2006). Longer-range observations, when required, can sometimes be obtained via systematic

aerial surveys or aircraft-based observations of behavior (*e.g.*, Richardson *et al.*, 1986, 1999; Miller *et al.*, 1999, 2005; Yazvenko *et al.*, 2007a, 2007b) or by use of observers on one or more support vessels operating in coordination with the seismic vessel (*e.g.*, Smultea *et al.*, 2004; Johnson *et al.*, 2007). However, the presence of other vessels near the source vessel can, at least at times, reduce sightability of cetaceans from the source vessel (Beland *et al.*, 2009), thus complicating interpretation of sighting data.

Some baleen whales show considerable tolerance of seismic pulses. However, when the pulses are strong enough, avoidance or other behavioral changes become evident. Because the responses become less obvious with diminishing received sound level, it has been difficult to determine the maximum distance (or minimum received sound level) at which reactions to seismic activity become evident and, hence, how many whales are affected.

Studies of gray, bowhead, and humpback whales have determined that received levels of pulses in the 160–170 dB re 1 μ Pa (rms) range seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed (McCauley *et al.*, 1998, 1999, 2000). In many areas, seismic pulses diminish to these levels at distances ranging from 4–15 km (2.5–9.3 mi) from the source. A substantial proportion of the baleen whales within such distances may show avoidance or other strong disturbance reactions to the operating airgun array. Some extreme examples include migrating bowhead whales avoiding considerably larger distances (20–30 km [12.4–18.6 mi]) at lower received sound levels (120–130 dB re 1 μ Pa (rms)) when exposed to airguns from seismic surveys. Also, even in cases where there is no conspicuous avoidance or change in activity upon exposure to sound pulses from distant seismic operations, there are sometimes subtle changes in behavior (*e.g.*, surfacing–respiration–dive cycles) that are only evident through detailed statistical analysis (*e.g.*, Richardson *et al.*, 1986; Gailey *et al.*, 2007).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rates or distribution and habitat use in subsequent days or years. However, gray whales have continued to migrate annually along the west coast of North America despite intermittent seismic exploration (and much ship traffic) in that area for decades

(Appendix A in Malme *et al.*, 1984; Richardson *et al.*, 1995), and there has been a substantial increase in the population over recent decades (Allen and Angliss, 2010). The western Pacific gray whale population did not seem affected by a seismic survey in its feeding ground during a prior year (Johnson *et al.*, 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer despite seismic exploration in their summer and autumn range for many years (Richardson *et al.*, 1987), and their numbers have increased notably during that same time period (Allen and Angliss, 2010). Bowheads also have been observed over periods of days or weeks in areas ensonified repeatedly by seismic pulses (Richardson *et al.*, 1987; Harris *et al.*, 2007). However, it is generally not known whether the same individual bowheads were involved in these repeated observations (within and between years) in strongly ensonified areas.

Odontocete: Little systematic information is available about reactions of toothed whales to airgun pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above have been reported for toothed whales. However, there are recent systematic data on sperm whales (*e.g.*, Gordon *et al.*, 2006; Madsen *et al.*, 2006; Winsor and Mate, 2006; Jochens *et al.*, 2008; Miller *et al.*, 2009). There is also an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (*e.g.*, Stone, 2003; Smultea *et al.*, 2004; Moulton and Miller, 2005; Holst *et al.*, 2006; Stone and Tasker, 2006; Potter *et al.*, 2007; Hauser *et al.*, 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.*, 2009; Richardson *et al.*, 2009).

Dolphins and porpoises are often seen by observers on active seismic vessels, occasionally at close distances (*e.g.*, bow riding). Marine mammal monitoring data during seismic surveys often show that animal detection rates drop during the firing of seismic airguns, indicating that animals may be avoiding the vicinity of the seismic area (Smultea *et al.*, 2004; Holst *et al.*, 2006; Hauser *et al.*, 2008; Holst and Smultea, 2008; Richardson *et al.*, 2009). Also, belugas summering in the Canadian Beaufort Sea showed larger-scale avoidance, tending to avoid waters out to 10–20 km (6.2–12.4 mi) from operating seismic vessels. In contrast, recent studies show little evidence of conspicuous reactions by sperm whales to airgun pulses, contrary to earlier indications (*e.g.*, Gordon *et al.*, 2006; Stone and Tasker,

2006; Winsor and Mate, 2006; Jochens *et al.*, 2008), except the lower buzz (echolocation signals) rates that were detected during exposure of airgun pulses (Miller *et al.*, 2009).

There are almost no specific data on responses of beaked whales to seismic surveys, but it is likely that most if not all species show strong avoidance. There is increasing evidence that some beaked whales may strand after exposure to strong noise from tactical military mid-frequency sonars. Whether they ever do so in response to seismic survey noise is unknown. Northern bottlenose whales seem to continue to call when exposed to pulses from distant seismic vessels.

For delphinids, and possibly the Dall's porpoise, available data suggest that individuals may not react until sounds are ≥ 170 dB re 1 μ Pa (rms). With a medium-to-large airgun array, received levels typically diminish to 170 dB within 1–4 km (0.62–2.5 mi), whereas levels typically remain above 160 dB out to 4–15 km (e.g., Tolstoy *et al.*, 2009). Reaction distances for delphinids are more consistent at the typical 170 dB re 1 μ Pa (rms) distances. Stone (2003) and Stone and Tasker (2006) reported that all small odontocetes (including killer whales) observed during seismic surveys in UK waters remained significantly further from the source during periods of shooting on surveys with large volume airgun arrays than during periods without airgun shooting.

Due to their relatively higher frequency hearing ranges when compared to mysticetes, odontocetes may have stronger responses to mid- and high-frequency sources such as sub-bottom profilers, side scan sonar, and echo sounders than mysticetes (Richardson *et al.*, 1995; Southall *et al.*, 2007).

Pinnipeds: Few studies of the reactions of pinnipeds to noise from open-water seismic exploration have been published (for review of the early literature, see Richardson *et al.*, 1995). However, pinnipeds have been observed during a number of seismic monitoring studies. Monitoring in the Beaufort Sea during 1996–2002 provided a substantial amount of information on avoidance responses (or lack thereof) and associated behavior. Additional monitoring of that type has been done in the Beaufort and Chukchi Seas in 2006–2009. Pinnipeds exposed to seismic surveys have also been observed during seismic surveys along the U.S. west coast. Also, there are data on the reactions of pinnipeds to various other related types of impulsive sounds.

Early observations provided considerable evidence that pinnipeds are often quite tolerant of strong pulsed sounds. During seismic exploration off Nova Scotia, gray seals exposed to noise from airguns and linear explosive charges reportedly did not react strongly (J. Parsons in Greene *et al.*, 1985). An airgun caused an initial startle reaction among South African fur seals but was ineffective in scaring them away from fishing gear. Pinnipeds in both water and air sometimes tolerate strong noise pulses from non-explosive and explosive scaring devices, especially if attracted to the area for feeding or reproduction (Mate and Harvey, 1987; Reeves *et al.*, 1996). Thus, pinnipeds are expected to be tolerant of, or to habituate to, repeated underwater sounds from distant seismic sources, at least when the animals are strongly attracted to the area.

In summary, visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior. These studies show that many pinnipeds do not avoid the area within a few hundred meters of an operating airgun array. However, based on the studies with large sample size, or observations from a separate monitoring vessel, or radio telemetry, it is apparent that some phocid seals do show localized avoidance of operating airguns. The limited nature of this tendency for avoidance is a concern. It suggests that pinnipeds may not move away, or move very far away, before received levels of sound from an approaching seismic survey vessel approach those that may cause hearing impairment.

(2) Masking

Masking is the obscuring of sounds of interest by other sounds, often at similar frequencies. Chronic exposure to excessive, though not high-intensity, noise 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. Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, marine mammals that experience severe (intensity and duration) acoustic masking could potentially suffer some adverse effects.

Masking occurs when noise and signals (that animal utilizes) overlap at both spectral and temporal scales. For

the airgun noise generated from the proposed in-ice marine seismic survey, these are low frequency (under 1 kHz) pulses with extremely short durations (in the scale of milliseconds). Lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. There is little concern regarding masking due to the brief duration of these pulses and relatively longer silence between airgun shots (9–12 seconds) near the sound source. However, at long distances (over tens of kilometers away) in deep water, due to multipath propagation and reverberation, the durations of airgun pulses can be “stretched” to seconds with long decays (Madsen *et al.*, 2006; Clark and Gagnon, 2006). Therefore it could affect communication signals used by low frequency mysticetes (e.g., bowhead and gray whales) when they occur near the noise band and thus reduce the communication space of animals (e.g., Clark *et al.*, 2009a, 2009b) and affect their vocal behavior (e.g., Foote *et al.*, 2004; Holt *et al.*, 2009). Further, in areas of shallow water, multipath propagation of airgun pulses could be more profound, thus affecting communication signals from marine mammals even at close distances. Average ambient noise in areas where received seismic noises are heard can be elevated. At long distances, however, the intensity of the noise is greatly reduced. Nevertheless, partial informational and energetic masking of different degrees could affect signal receiving in some marine mammals within the ensonified areas. Additional research is needed to further address these effects.

Although masking effects of pulsed sounds on marine mammal calls and other natural sounds are expected to be limited, there are few specific studies on this. Some whales continue calling in the presence of seismic pulses, and whale calls often can be heard between the seismic pulses (e.g., Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999a, 1999b; Nieukirk *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a, 2005b, 2006; Dunn and Hernandez, 2009).

Among the odontocetes, there has been one report that sperm whales ceased calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994). However, more recent studies of sperm whales found that they continued calling in the presence of seismic pulses (Madsen *et al.*, 2002; Tyack *et al.*, 2003; Smultea *et al.*, 2004; Holst *et al.*, 2006; Jochens *et al.*, 2008). Madsen *et al.* (2006) noted that airgun

sounds would not be expected to mask sperm whale calls given the intermittent nature of airgun pulses. Dolphins and porpoises are also commonly heard calling while airguns are operating (Gordon *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a, 2005b; Potter *et al.*, 2007). Masking effects of seismic pulses are expected to be inconsequential in the case of the smaller odontocetes, given the intermittent nature of seismic pulses plus the fact that sounds important to them are predominantly at much higher frequencies than are the dominant components of airgun sounds.

Pinnipeds have best hearing sensitivity and/or produce most of their sounds at frequencies higher than the dominant components of airgun sound, but there is some overlap in the frequencies of the airgun pulses and the calls. However, the intermittent nature of airgun pulses presumably reduces the potential for masking.

Marine mammals are thought to be able to compensate for masking by adjusting their acoustic behavior, such as shifting call frequencies and increasing call volume and vocalization rates, as discussed earlier (*e.g.*, Miller *et al.*, 2000; Parks *et al.*, 2007; Di Iorio and Clark, 2009; Parks *et al.*, 2010); the biological significance of these modifications is still unknown and would certainly depend on the duration of the masking event, the behavioral state of the animal, and the overall context of the exposure.

(3) Hearing Impairment

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 unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.*, 2007). Marine mammals that experience TTS or PTS will have reduced sensitivity at the frequency band of the TS, which may affect their capability of communication, orientation, or prey detection. The degree of TS depends on the intensity of the received levels the animal is exposed to, and the frequency at which TS occurs depends on the frequency of the received sound. It has been shown that in most cases, TS occurs at the frequencies approximately one-octave above that of the received sound. Repeated sound exposure that leads to TTS could cause PTS. For

transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound.

TTS

TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be stronger in order to be heard. It is a temporary phenomenon, and (especially when mild) is not considered to represent physical damage or "injury" (Southall *et al.*, 2007). Rather, the onset of TTS is an indicator that, if the animal is exposed to higher levels of that sound, physical damage is ultimately a possibility.

The magnitude of TTS depends on the level and duration of noise exposure, and to some degree on frequency, among other considerations (Kryter, 1985; Richardson *et al.*, 1995; Southall *et al.*, 2007). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. In terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days. Only a few data have been obtained on sound levels and durations necessary to elicit mild TTS in marine mammals (none in mysticetes), and none of the published data concern TTS elicited by exposure to multiple pulses of sound during operational seismic surveys (Southall *et al.*, 2007).

For toothed whales, experiments on a bottlenose dolphin (*Tursiops truncatus*) and beluga whale showed that exposure to a single watergun impulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p-p), which is equivalent to 228 dB re 1 μ Pa (p-p), 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 4 minutes of the exposure (Finneran *et al.*, 2002). No TTS was observed in the bottlenose dolphin.

Finneran *et al.* (2005) further examined the effects of tone duration on TTS in bottlenose dolphins. Bottlenose dolphins were exposed to 3 kHz tones (non-impulsive) for periods of 1, 2, 4 or 8 seconds (s), with hearing tested at 4.5 kHz. For 1-s exposures, TTS occurred with sound exposure levels (SELs) of 197 dB, and for exposures >1 s, SEL >195 dB resulted in TTS (SEL is equivalent to energy flux, in dB re 1 μ Pa²-s). At an SEL of 195 dB, the mean TTS (4 min after exposure) was 2.8 dB. Finneran *et al.* (2005) suggested that an SEL of 195 dB is the likely threshold for the onset of TTS in dolphins and belugas exposed to tones of durations 1–

8 s (*i.e.*, TTS onset occurs at a near-constant SEL, independent of exposure duration). That implies that, at least for non-impulsive tones, a doubling of exposure time results in a 3 dB lower TTS threshold.

However, the assumption that, in marine mammals, the occurrence and magnitude of TTS is a function of cumulative acoustic energy (SEL) is probably an oversimplification. Kastak *et al.* (2005) reported preliminary evidence from pinnipeds that, for prolonged non-impulse noise, higher SELs were required to elicit a given TTS if exposure duration was short than if it was longer, *i.e.*, the results were not fully consistent with an equal-energy model to predict TTS onset. Mooney *et al.* (2009a) showed this in a bottlenose dolphin exposed to octave-band non-impulse noise ranging from 4 to 8 kHz at SPLs of 130 to 178 dB re 1 μ Pa for periods of 1.88 to 30 minutes (min). Higher SELs were required to induce a given TTS if exposure duration was short than if it was longer. Exposure of the aforementioned bottlenose dolphin to a sequence of brief sonar signals showed that, with those brief (but non-impulse) sounds, the received energy (SEL) necessary to elicit TTS was higher than was the case with exposure to the more prolonged octave-band noise (Mooney *et al.*, 2009b). Those authors concluded that, when using (non-impulse) acoustic signals of duration ~0.5 s, SEL must be at least 210–214 dB re 1 μ Pa²-s to induce TTS in the bottlenose dolphin. The most recent studies conducted by Finneran *et al.* (2010a, 2010b) also support the notion that exposure duration has a more significant influence compared to sound pressure level (SPL) as the duration increases, and that TTS growth data are better represented as functions of SPL and duration rather than SEL alone (Finneran *et al.*, 2010a, 2010b). In addition, Finneran *et al.* (2010b) conclude that when animals are exposed to intermittent noises, there is recovery of hearing during the quiet intervals between exposures through the accumulation of TTS across multiple exposures. Such findings suggest that when exposed to multiple seismic pulses, partial hearing recovery also occurs during the seismic pulse intervals.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. The frequencies to which baleen whales are most sensitive are lower than those to which odontocetes are most sensitive, and natural ambient noise levels at those low frequencies tend to be higher (Urick, 1983). As a result,

auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison, 2004). From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales. However, no cases of TTS are expected given the size of the airguns proposed to be used and the strong likelihood that baleen whales (especially migrating bowheads) would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS.

In pinnipeds, TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound have not been measured. Initial evidence from prolonged exposures suggested that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.*, 1999; 2005). However, more recent indications are that TTS onset in the most sensitive pinniped species studied (harbor seal, which is closely related to the ringed seal) may occur at a similar SEL as in odontocetes (Kastak *et al.*, 2004).

Most cetaceans show some degree of avoidance of seismic vessels operating an airgun array (see above). It is unlikely that these cetaceans would be exposed to airgun pulses at a sufficiently high enough level for a sufficiently long enough period to cause more than mild TTS, given the relative movement of the vessel and the marine mammal. TTS would be more likely in any odontocetes that bow- or wake-ride or otherwise linger near the airguns. However, while bow- or wake-riding, odontocetes would be at the surface and thus not exposed to strong sound pulses given the pressure release and Lloyd Mirror effects at the surface. But if bow- or wake-riding animals were to dive intermittently near airguns, they could be exposed to strong sound pulses, possibly repeatedly.

If some cetaceans did incur mild or moderate TTS (a Level B harassment) through exposure to airgun sounds in this manner, this would very likely be a temporary and reversible phenomenon. However, even a temporary reduction in hearing sensitivity could be deleterious in the event that, during that period of reduced sensitivity, a marine mammal needed its full hearing sensitivity to detect approaching predators, or for some other reason.

Some pinnipeds show avoidance reactions to airguns, but their avoidance reactions are generally not as strong or

consistent as those of cetaceans. Pinnipeds occasionally seem to be attracted to operating seismic vessels. There are no specific data on TTS thresholds of pinnipeds exposed to single or multiple low-frequency pulses. However, given the indirect indications of a lower TTS threshold for the harbor seal than for odontocetes exposed to impulse sound (see above), it is possible that some pinnipeds close to a large airgun array could incur TTS.

NMFS typically includes mitigation requirements to ensure that cetaceans and pinnipeds are not exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 μ Pa (rms). The 180/190 dB acoustic criteria were taken from recommendations by an expert panel of the High Energy Seismic Survey (HESS) Team that performed an assessment on noise impacts by seismic airguns to marine mammals in 1997, although the HESS Team recommended a 180-dB limit for pinnipeds in California (HESS, 1999). The 180 and 190 dB re 1 μ Pa (rms) levels have not been considered to be the levels above which TTS might occur. Rather, they were the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals started to become available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. As summarized above, data that are now available imply that TTS is unlikely to occur in various odontocetes (and probably mysticetes as well) unless they are exposed to a sequence of several airgun pulses stronger than 180 dB re 1 μ Pa (rms). On the other hand, for the harbor seal, harbor porpoise, and perhaps some other species, TTS may occur upon exposure to one or more airgun pulses whose received level equals the NMFS "do not exceed" value of 180 dB re 1 μ Pa (rms). That criterion corresponds to a single-pulse SEL of 175–180 dB re 1 μ Pa²-s in typical conditions, whereas TTS is suspected to be possible in harbor seals and harbor porpoises with a cumulative SEL of ~171 and ~164 dB re 1 μ Pa²-s, respectively.

It has been shown that most large whales and many smaller odontocetes (especially the harbor porpoise) show at least localized avoidance of ships and/or seismic operations. Even when avoidance is limited to the area within a few hundred meters of an airgun array, that should usually be sufficient to avoid TTS based on what is currently known about thresholds for TTS onset in cetaceans. In addition, ramping up airgun arrays, which is standard

operational protocol for many seismic operators, may allow cetaceans near the airguns at the time of startup (if the sounds are aversive) to move away from the seismic source and to avoid being exposed to the full acoustic output of the airgun array. Thus, most baleen whales likely will not be exposed to high levels of airgun sounds provided the ramp-up procedure is applied. Likewise, many odontocetes close to the trackline are likely to move away before the sounds from an approaching seismic vessel become sufficiently strong for there to be any potential for TTS or other hearing impairment. Hence, there is little potential for baleen whales or odontocetes that show avoidance of ships or airguns to be close enough to an airgun array to experience TTS. Nevertheless, even if marine mammals were to experience TTS, the magnitude of the TTS is expected to be mild and brief, only in a few decibels for minutes.

PTS

When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). Physical damage to a mammal's hearing apparatus can occur if it is exposed to sound impulses that have very high peak pressures, especially if they have very short rise times. (Rise time is the interval required for sound pressure to increase from the baseline pressure to peak pressure.)

There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the likelihood that some mammals close to an airgun array might incur at least mild TTS (see above), there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS (*e.g.*, Richardson *et al.*, 1995; Gedamke *et al.*, 2008). 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 (Southall *et al.*, 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as airgun pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis and probably >6

dB higher (Southall *et al.*, 2007). The low-to-moderate levels of TTS that have been induced in captive odontocetes and pinnipeds during controlled studies of TTS have been confirmed to be temporary, with no measurable residual PTS (Kastak *et al.*, 1999; Schlundt *et al.*, 2000; Finneran *et al.*, 2002; 2005; Nachtigall *et al.*, 2003; 2004). However, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter 1985). In terrestrial mammals, the received sound level from a single non-impulsive sound exposure must be far above the TTS threshold for any risk of permanent hearing damage (Kryter, 1994; Richardson *et al.*, 1995; Southall *et al.*, 2007). However, there is special concern about strong sounds whose pulses have very rapid rise times. In terrestrial mammals, there are situations when pulses with rapid rise times (*e.g.*, from explosions) can result in PTS even though their peak levels are only a few dB higher than the level causing slight TTS. The rise time of airgun pulses is fast but not as fast as that of an explosion.

Some factors that contribute to onset of PTS, at least in terrestrial mammals, are as follows:

- Exposure to a single very intense sound,
- Fast rise time from baseline to peak pressure,
- Repetitive exposure to intense sounds that individually cause TTS but not PTS, and
- Recurrent ear infections or (in captive animals) exposure to certain drugs.

Cavanagh (2000) reviewed the thresholds used to define TTS and PTS. Based on this review and SACLANT (1998), it is reasonable to assume that PTS might occur at a received sound level 20 dB or more above that inducing mild TTS. However, for PTS to occur at a received level only 20 dB above the TTS threshold, the animal probably would have to be exposed to a strong sound for an extended period or to a strong sound with a rather rapid rise time.

More recently, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB, on an SEL basis, for there to be risk of PTS. Thus, for cetaceans exposed to a sequence of sound pulses, they estimate that the PTS threshold might be an M-weighted SEL (for the sequence of received pulses) of ~198 dB re 1 $\mu\text{Pa}^2\text{-s}$. Additional assumptions had to be made to derive a corresponding estimate for pinnipeds, as the only

available data on TTS-thresholds in pinnipeds pertained to non-impulse sound (see above). Southall *et al.* (2007) estimated that the PTS threshold could be a cumulative SEL of ~186 dB re 1 $\mu\text{Pa}^2\text{-s}$ in the case of a harbor seal exposed to impulse sound. The PTS threshold for the California sea lion and northern elephant seal would probably be higher given the higher TTS thresholds in those species. Southall *et al.* (2007) also note that, regardless of the SEL, there is concern about the possibility of PTS if a cetacean or pinniped received one or more pulses with peak pressure exceeding 230 or 218 dB re 1 μPa , respectively. Thus, PTS might be expected upon exposure of cetaceans to either SEL ≥ 198 dB re 1 $\mu\text{Pa}^2\text{-s}$ or peak pressure ≥ 230 dB re 1 μPa . Corresponding proposed dual criteria for pinnipeds (at least harbor seals) are ≥ 186 dB SEL and ≥ 218 dB peak pressure (Southall *et al.*, 2007). These estimates are all first approximations, given the limited underlying data, assumptions, species differences, and evidence that the “equal energy” model may not be entirely correct.

Sound impulse duration, peak amplitude, rise time, number of pulses, and inter-pulse interval are the main factors thought to determine the onset and extent of PTS. Ketten (1994) has noted that the criteria for differentiating the sound pressure levels that result in PTS (or TTS) are location and species specific. PTS effects may also be influenced strongly by the health of the receiver's ear.

As described above for TTS, in estimating the amount of sound energy required to elicit the onset of TTS (and PTS), it is assumed that the auditory effect of a given cumulative SEL from a series of pulses is the same as if that amount of sound energy were received as a single strong sound. There are no data from marine mammals concerning the occurrence or magnitude of a potential partial recovery effect between pulses. In deriving the estimates of PTS (and TTS) thresholds quoted here, Southall *et al.* (2007) made the precautionary assumption that no recovery would occur between pulses.

It is unlikely that an odontocete would remain close enough to a large airgun array for a sufficiently long enough period to incur PTS. There is some concern about bow-riding odontocetes, but for animals at or near the surface, auditory effects are reduced by Lloyd's mirror and surface release effects. The presence of the vessel between the airgun array and bow-riding odontocetes could also, in some but probably not all cases, reduce the

levels received by bow-riding animals (*e.g.*, Gabriele and Kipple, 2009). The TTS (and thus PTS) thresholds of baleen whales are unknown but, as an interim measure, assumed to be no lower than those of odontocetes. Also, baleen whales generally avoid the immediate area around operating seismic vessels, so it is unlikely that a baleen whale could incur PTS from exposure to airgun pulses. The TTS (and thus PTS) thresholds of some pinnipeds (*e.g.*, harbor seal) as well as the harbor porpoise may be lower (Kastak *et al.*, 2005; Southall *et al.*, 2007; Lucke *et al.*, 2009). If so, TTS and potentially PTS may extend to a somewhat greater distance for those animals. Again, Lloyd's mirror and surface release effects will ameliorate the effects for animals at or near the surface. NMFS considers PTS to be a Level A harassment.

(4) Non-Auditory Physical Effects

Non-auditory physical effects might occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include neurological effects, bubble formation, and other types of organ or tissue damage. Some marine mammal species (*i.e.*, beaked whales) may be especially susceptible to injury and/or stranding when exposed to intense sounds. However, there is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns, and beaked whales do not occur in the proposed project area. In addition, marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes (including belugas), and some pinnipeds, are especially unlikely to incur non-auditory impairment or other physical effects.

Therefore, it is unlikely that such effects would occur during ION's proposed in-ice seismic surveys given the brief duration of exposure and the planned monitoring and mitigation measures described later in this document.

Additional non-auditory effects include elevated levels of stress response (Wright *et al.*, 2007; Wright and Highfill, 2007). Although not many studies have been done on noise-induced stress in marine mammals, extrapolation of information regarding stress responses in other species seems applicable because the responses are highly consistent among all species in which they have been examined to date

(Wright *et al.*, 2007). Therefore, it is reasonable to conclude that noise acts as a stressor to marine mammals. Furthermore, given that marine mammals will likely respond in a manner consistent with other species studied, repeated and prolonged exposures to stressors (including or induced by noise) could potentially be problematic for marine mammals of all ages. Wright *et al.* (2007) state that a range of issues may arise from an extended stress response including, but not limited to, suppression of reproduction (physiologically and behaviorally), accelerated aging and sickness-like symptoms. However, as mentioned above, ION's proposed activity is not expected to result in these severe effects due to the nature of the potential sound exposure.

(5) Stranding and Mortality

Marine mammals close to underwater detonations can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). Airgun pulses are less energetic, and their peak amplitudes have slower rise times, while stranding and mortality events would include other energy sources (acoustical or shock wave) far beyond just seismic airguns. To date, there is no evidence that serious injury, death, or stranding by marine mammals can occur from exposure to airgun pulses, even in the case of large airgun arrays.

However, in past IHA notices for seismic surveys, commenters have referenced two stranding events allegedly associated with seismic activities, one off Baja California and a second off Brazil. NMFS has addressed this concern several times, and, without new information, does not deem the issue to warrant further discussion. For information relevant to strandings of marine mammals, readers are encouraged to review NMFS' response to comments on this matter found in 69 FR 74906 (December 14, 2004), 71 FR 43112 (July 31, 2006), 71 FR 50027 (August 24, 2006), and 71 FR 49418 (August 23, 2006).

It should be noted that strandings related to sound exposure have not been recorded for marine mammal species in the Beaufort Sea. NMFS notes that in the Beaufort Sea, aerial surveys have been conducted by the Minerals Management Service (now BOEM) and industry during periods of industrial activity (and by BOEM during times with no activity). No strandings or marine mammals in distress have been observed during these surveys, and none have been reported by North Slope Borough inhabitants. In addition, there

are very few instances that seismic surveys in general have been linked to marine mammal strandings, other than those mentioned above. As a result, NMFS does not expect any marine mammals will incur serious injury or mortality in the Arctic Ocean or strand as a result of the proposed seismic survey.

Potential Effects From Echo Sounders on Marine Mammals

Three types of echo sounders have been proposed for ION's 2012 in-ice seismic survey in the Beaufort and Chukchi Seas. In general, the potential effects of this equipment on marine mammals can be expected to be similar to those from the airgun, except that the sounds from these sources are at much higher frequencies than those from airguns, and thus may have more potential to affect mid- and high-frequency hearing odontocetes and pinnipeds than mysticetes, who are thought to be more sensitive to low-frequency sounds. Therefore, it is possible that the onset of hearing impairment to odontocetes and pinnipeds that are exposed to mid- or high-frequency sources could be lower, or the growth of TTS and/or PTS could be faster than the earlier empirical measurements using the watergun source (Finneran *et al.*, 2002) or 3 kHz tones (Finneran *et al.*, 2005). However, the magnitude of the impacts is expected to be less due to the lower intensity of the sound from echo sounders when compared to seismic airguns. Because of the higher frequencies of the echo sounder signals, the propagation ranges of acoustic signals are also much shorter than those from the airgun array. Since these echo sounders will be operating during the seismic survey, no additional takes of marine mammals would be considered as take estimates would be calculated from ensonified zones from seismic airguns. In addition, due to the fact that the operating frequencies of some of this equipment (*e.g.*, Skipper GDS102 that operates at frequencies above 200 kHz) are above the hearing ranges of marine mammals, use of the equipment is not expected to cause any take of marine mammals. Furthermore, the beam patterns of the echo sounders are directed downward and are narrow, so any marine mammals that encounter the echo sounders at close range are unlikely to be subjected to repeated pulses.

Potential Effects From Icebreaking on Marine Mammals

(1) Noise Source Levels From Icebreaking

Most sounds generated by icebreaking activities are caused by cavitation of the propellers. Propeller cavitation and resulting sounds tend to be greatest when a vessel is moving astern or when its forward progress has been stopped by heavy ice during ramming. When making continuous forward progress through ice, more power is required than when traveling through open water. The greater the resistance, the greater the propeller cavitation and resulting sounds, although they are typically less strong during continuous forward progress than during backing and ramming in heavy ice.

Measurements of the *Robert Lemur* pushing and breaking ice in the Beaufort Sea in 1986 resulted in an estimated broadband source level of 193 dB re 1 μ Pa @ 1 m (Richardson *et al.*, 1995). Ice conditions were not described in detail, but at that time of year (in September), ice is not typically forming, so the ice pans that were encountered were likely composed of second year ice or multi-year ice.

The broadband source levels of three different vessels pushing on or breaking ice during drilling activities in the U.S. Beaufort Sea in 1993 were 181–183, 184, and 174 dB re 1 μ Pa @ 1 m (Hall *et al.*, 1994). Similar to the above, ice conditions in mid-August when these recordings were made were likely to have been thick first year (sea ice does not reach “second year” status until September 1), second year, or multi-year ice.

The strongest sounds produced by an icebreaker backing and ramming an ice ridge were measured at 203 dB re 1 μ Pa @ 1 m at the point when the propellers were still turning at full speed ahead, but the vessel had come to a stop when it failed to break the ice ridge (Erbe and Farmer, 1998). A similar maximum source level (200 dB re 1 μ Pa @ 1m) was reported during backing and ramming activities by the U.S. Coast Guard Cutter *Healy* as measured by a sonobuoy deployed from that vessel in 2009 (Roth and Schmidt, 2010).

Roth and Schmidt (2010) describe three very recent “case studies” of *Healy* breaking ice in the high Arctic. Ice type is not described, but given the date, location, and pictures provided the ice is clearly not first year ice and instead likely second year or multi-year ice. The first case study provides an example of the *Healy* traveling through 7–9/10ths ice and then entering open-water. Average source levels in ice were

estimated to be ~185 dB while average source levels in open-water were estimated between 175–180 dB. The second case study is an example of backing and ramming in 8/10ths ice. Maximum source levels reached 191–195 dB. The third case study is another example of backing and ramming, this time in 9/10ths ice, where maximum source levels reached 200 dB.

None of these examples apply very well to ice conditions likely to be encountered during ION's proposed October-December survey. The ice regimes to be encountered along the Alaskan Coast in the proposed survey area during the proposed survey period will vary considerably from predominantly or entirely open water in early October to being predominantly new, first year ice in November. The survey work will take advantage of such variations to complete the more difficult lines when the ice conditions are favorable for that work.

This project will involve two ships working as one when in or near sea ice. In this mode, the icebreaker (*Polar Prince*) would escort the geophysical survey ship (*Geo Arctic*). As both ships must move continuously at near survey speed throughout this escort, it is essential that this work is carried out in ice conditions where the icebreaker is not obliged to undertake ramming operations.

ION used the Arctic Ice Regime Shipping System (AIRSS) to aid in their determination concerning suitable conditions for the survey. This system allows the Arctic Mariner/Ice Master to calculate the "toughness" of a particular ice regime. As a "rule of thumb," seismic is normally considered achievable in ice where the calculation indicates navigation can safely be undertaken by the ice strengthened (Ice Class A1A, type A) geophysical ship, operating independently. ION states that it will take a conservative approach by using a heavy escort icebreaker. This means the icebreaker is normally working well below maximum power but does have a huge propulsive power capacity held in reserve in case ridges or other such ice features are encountered. Thus the icebreaker is breaking ice at a fraction of its maximum or rated capacity.

Compared to the aggressive icebreaking involved in the examples above, the icebreaking for in-ice seismic surveys is of a much different and considerably lower order. In most ice regimes expected to be encountered during ION's proposed survey, the *Polar Prince* will have about 5,123 HP available for propulsion, which is far less than the power of the heavy

icebreaker *Healy* reported in Roth and Schmidt (2010). There would still be a direct correlation between icebreaking effort and icebreaking noise, although there are likely also many other variables such as thermal gradient, stage of ice development, speed of impact, propulsion system characteristics, hull and bow form, etc., that may differentiate the sounds produced during the proposed survey. In the examples provided in Roth and Schmidt (2010), the *Healy* appears to be backing and ramming in heavy multiyear ice (based on our interpretation of the pictures). Such conditions are beyond the allowable operational conditions of this project, and, if such conditions were encountered, the Type A geophysical ship could not follow such an ice-encumbered track of multiyear ice.

It should also be noted that the *Healy* was operating at maximum capacity during the measurements reported in Roth and Schmidt (2010), while during ice-seismic the escorting icebreaker rarely operates in excess of 50% capacity. Thus, accounting for the disparity in the horsepower ratings of the *Polar Prince* vs. the *Healy*, the *Polar Prince* is rendering an output, in terms of horsepower expended, of <25% each of that of the *Healy* during the reported measurements.

Based on available information regarding sounds produced by icebreaking in various ice regimes and the expected ice conditions during the proposed survey, NMFS determined that vessel sounds generated during ice breaking are likely to have source levels between 175 and 185 dB re 1 μ Pa-m.

(2) Impacts of Icebreaking Noise on Marine Mammals

Limited information is available about the effects of icebreaking ships on most species of marine mammals. Concerns have arisen in the past due to proposals (which were never realized) to conduct shipping of oil and gas in the Arctic via large icebreakers (Peterson, 1981). In the past, smaller icebreaking ships were used by the oil and gas industry in the Beaufort and Chukchi Seas to extend the offshore drilling period in support of offshore drilling, and several icebreakers or strengthened cargo ships have been used in the Russian northern sea route, as well as elsewhere in the Arctic and Antarctic (Armstrong, 1984; Barr and Wilson, 1985; Brigham, 1985).

The primary concern regarding icebreaking activities involves the production of intense underwater sound (Richardson *et al.*, 1995). Estimated source levels of the ice-breaking cargo vessel *MV Arctic* may be detectable by

seals under fast ice at distances up to 20–35 km (12.4–21.8 mi) (Davis and Malme, 1997). However, icebreaking activities may also have non-acoustic effects, such as the potential for causing injury, ice entrapment of animals that follow the ship, and disruption of ice habitat (reviewed in Richardson *et al.*, 1989), though, as described below, these impacts are not anticipated during this action. The species of marine mammals that may be present and the nature of icebreaker activities are strongly influenced by ice type. Some species are more common in loose ice near the margins of heavy pack ice while others appear to prefer heavy pack ice. Propeller cavitation noise of icebreaking ships in loose ice is expected to be much lower than in areas of heavier pack ice or thick landfast ice where ship speed will be reduced, power levels will be higher, and there will be greater propeller cavitation and back-ramming (Richardson *et al.*, 1995).

Beluga Whales—Erbe and Farmer (1998) measured masked hearing thresholds of a captive beluga whale. They reported that the recording of a Canadian Coast Guard ship, *Henry Larsen*, ramming ice in the Beaufort Sea, masked recordings of beluga vocalizations at a noise-to-signal pressure ratio of 18 dB. That occurred when the noise pressure level was eight times as high as the call. In linear units, the ramming noise was 8 times as strong as the call (Erbe and Farmer, 1998). A similar study using a software model to estimate the zones of impact around icebreakers affecting beluga whales in the Beaufort Sea predicted that masking of beluga communication signals by ramming noise from an icebreaker could occur within 40–71 km (25–44 mi), depending on the location. However, Arctic beluga whales have shown avoidance of icebreakers when first detected (Erbe and Farmer, 2000), so individuals are unlikely to get close enough for effects such as masking to occur. In addition, vocal behavior of beluga whales in the St. Lawrence River in the presence of a ferry and a small motorboat have shown that belugas can change the types of calls they use, as well as shift the mean call frequency up during noise exposure (Lesage *et al.*, 1999). Therefore, it is possible that beluga whales in the Beaufort and Chukchi Seas may also have some mechanism that would allow them to adapt to ambient noise due to icebreaking activities.

In 1991 and 1994 in the Alaskan Beaufort Sea, Richardson *et al.* (1995b) recorded reactions of beluga and bowhead whales to playbacks of underwater propeller cavitation noise

from the icebreaker *Robert Lemeur* operating in heavy ice. Migrating belugas were observed close to the playback projectors on three dates, but interpretable data were only collected on 17 groups for two of these occasions. A minimum of six groups apparently altered their path in response to the playback, but whales approached within a few hundred (and occasionally tens of) meters before exhibiting a response. Icebreaker sounds were estimated at 78–84 dB re 1 μ Pa in the 1/3-octave band centered at 5,000 Hz, or 8–14 dB above ambient sound levels in that band, for the six groups that reacted. The authors estimated that reactions at this level would be estimated to occur at distances of approximately 10 km (6.2 mi) from an operating icebreaker.

Beluga whales are expected to avoid icebreaking vessels at distances of approximately 10 km (6.2 mi). The impacts of icebreaking associated with the seismic program on the behavior of belugas are expected to be temporary, lasting only as long as the activity is ongoing, and would have a negligible impact on the species or stock.

Bowhead Whales—In 1991 and 1994 in the Alaskan Beaufort Sea, Richardson *et al.* (1995b) recorded reactions of beluga and bowhead whales to playbacks of underwater propeller cavitation noise from the icebreaker *Robert Lemeur* operating in heavy ice. Bowhead whales migrating in the nearshore appeared to tolerate exposure to projected icebreaker sounds at received levels up to 20 dB or more above ambient noise levels. However, some bowheads appeared to divert their paths to remain further away from the projected sounds, particularly when exposed to levels >20 dB above ambient. Turning frequency, surface duration, number of blows per surfacing, and two multivariate indices of behavior were significantly correlated with the signal-to-noise ratio >20 dB (and as low as 10 dB for turning frequency). The authors suggested that bowheads may commonly react to icebreakers at distances up to 10–50 km (6.2–31 mi), but note that reactions were highly dependent on several variables not controlled in the study.

There are few other studies on the reactions of baleen whales to icebreaking activities. During fall 1992, migrating bowhead whales apparently avoided (by at least 25 km [15.5 mi]) a drill site that was supported almost daily by intensive icebreaking activity in the Alaskan Beaufort Sea (Brewer *et al.*, 1993). However, bowheads also avoided a nearby drill site in the fall of another year that had little icebreaking support (LGL and Greenridge, 1987).

Thus, level of contribution from icebreaking, ice concentration, and drilling noise resulting in bowhead responses is unknown.

Bowhead whales are expected to avoid vessels that are underway, including icebreakers. The impacts of icebreaking on the behavior of bowheads are likely to occur only if bowheads are still in the western portion of the proposed study area, although most bowheads will likely have passed through the survey area prior to the start of survey activities. The effects of icebreaking activities on bowhead whales are expected to be minor and short-term.

Pinnipeds—Reactions of walrus to icebreakers are described more thoroughly in the available literature than are reactions by other pinnipeds. When comparing the reaction distances of walrus to icebreaking ships vs. other ships traveling in open water, Fay *et al.* (1984) found that walrus reacted at longer distances to icebreakers. They were aware of the icebreaker when it was >2 km (1.2 mi) away, and females with pups entered the water and swam away when the ship was ~1 km (0.62 mi) away while adult males did so at distances of 0.1 to 0.3 km (0.1 to 0.2 mi). However, it was also noted that some walrus, ringed seals, and bearded seals also scrambled onto ice when an icebreaker was oriented toward them.

In another study of 202 walrus groups observed on ice floes during icebreaking activities, 32% dove into the water, and 6% became alert while on the ice (Brueggeman *et al.*, 1990, 1991, 1992). Concurrent aerial surveys indicated that walrus hauling out on ice floes may have avoided icebreaking activities within 10–15 km (6.2–9.3 mi) (Brueggeman *et al.*, 1990).

Ringed and bearded seals on pack ice approached by an icebreaker typically dove into the water within 0.93 km (0.58 mi) of the vessel but tended to be less responsive when the same ship was underway in open water (Brueggeman *et al.*, 1992). In another study, ringed and harp seals remained on the ice when an icebreaker was 1–2 km (0.62–1.2 mi) away, but seals often dove into the water when closer to the icebreaker (Kanik *et al.*, 1980 in Richardson *et al.*, 1995a). Ringed seals have also been seen feeding among overturned ice floes in the wake of icebreakers (Brewer *et al.*, 1993).

Seals swimming are likely to avoid approaching vessels by a few meters to a few tens of meters, while some “curious” seals are likely to swim toward vessels. Seals hauled out on ice also show mixed reaction to approaching vessels/icebreakers. Seals

are likely to dive into the water if the icebreaker comes within 1 km (0.62 mi). The impact of vessel traffic on seals is expected to be negligible.

One potential impact from icebreaking activities is ice entrapment of pinnipeds that are following the vessels. However, NMFS does not consider this likely because ice formation at the time of the proposed survey consists mostly of loose annual ice floes that will not freeze into extensive pack ice. In addition, the time chosen for the icebreaking seismic survey would occur before ringed seals start constructing lairs in ice around early March.

Finally, the breaking of heavy pack ice or thick landfast ice could also indirectly increase the level of ambient noise due to broken ice floes cracking against each other, and effectively change the area’s soundscape.

Vessel Sounds

In addition to the noise generated from seismic airguns and active sonar systems, various types of vessels will be used in the operations, including source vessels and support vessels. Sounds from boats and vessels have been reported extensively (Greene and Moore, 1995; Blackwell and Greene, 2002; 2005; 2006). Numerous measurements of underwater vessel sound have been performed in support of recent industry activity in the Chukchi and Beaufort Seas. Results of these measurements have been reported in various 90-day and comprehensive reports since 2007 (*e.g.*, Aerts *et al.*, 2008; Hauser *et al.*, 2008; Brueggeman, 2009; Ireland *et al.*, 2009). For example, Garner and Hannay (2009) estimated sound pressure levels of 100 dB at distances ranging from approximately 2.4 to 3.7 km (1.5 to 2.3 mi) from various types of barges. MacDonald *et al.* (2008) estimated higher underwater SPLs from the seismic vessel *Gilavar* of 120 dB at approximately 21 km (13 mi) from the source, although the sound level was only 150 dB at 26 m (85 ft) from the vessel. Compared to airgun pulses, underwater sound from vessels is generally at relatively low levels.

The primary sources of sounds from all vessel classes are propeller cavitation, propeller singing, and propulsion or other machinery. Propeller cavitation is usually the dominant noise source for vessels (Ross, 1976). Propeller cavitation and singing are produced outside the hull, whereas propulsion or other machinery noise originates inside the hull. There are additional sounds produced by vessel activity, such as pumps, generators, flow noise from water passing over the

hull, and bubbles breaking in the wake. Icebreakers contribute greater sound levels during ice-breaking activities than ships of similar size during normal operation in open water (Richardson *et al.*, 1995). This higher sound production results from the greater amount of power and propeller cavitation required when operating in thick ice. Source levels from various vessels would be empirically measured before the start of marine surveys.

For this project, the majority of any vessel noise would occur concurrently with sounds generated by seismic airguns or icebreaking and any potential impacts would be expected to be subsumed by the impacts of those louder sources.

Anticipated Effects on Habitat

The primary potential impacts to marine mammals and other marine species are associated with elevated sound levels produced by airguns and other active acoustic sources, noise generated from icebreaking, and breaking of ice during the seismic survey. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

Potential Impacts on Prey Species

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.*, 1981) and possibly avoid predators (Wilson and Dill, 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins, 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona, 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.*, 1993). In general, fish react more strongly to pulses of sound rather than a continuous signal (such as noise from a vessel or icebreaking) (Blaxter *et al.*, 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

Investigations of fish behavior in relation to vessel noise (Olsen *et al.*, 1983; Ona, 1988; Ona and Godo, 1990) have shown that fish react when the

sound from the engines and propeller exceeds a certain level. Avoidance reactions have been observed in fish, such as cod and herring, when vessels approached close enough that received sound levels are 110 dB to 130 dB (Nakken, 1992; Olsen, 1979; Ona and Godo, 1990; Ona and Toresen, 1988). However, other researchers have found that fish such as polar cod, herring, and capeline are often attracted to vessels (apparently by the noise) and swim toward the vessel (Rostad *et al.*, 2006). Typical sound source levels of vessel noise in the audible range for fish are 150 dB to 170 dB (Richardson *et al.*, 1995).

Further, during the proposed in-ice seismic survey, only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term, and fish would return to their pre-disturbance behavior once the seismic activity ceases (McCauley *et al.*, 2000a, 2000b; Santulli *et al.*, 1999; Pearson *et al.*, 1992). Thus, the proposed survey would have little, if any, impact on the abilities of marine mammals to feed in the area where seismic work is planned.

Some mysticetes, including bowhead whales, feed on concentrations of zooplankton. Some feeding bowhead whales may occur in the Alaskan Beaufort Sea in July and August, and others feed intermittently during their westward migration in September and October (Richardson and Thomson [eds.] 2002; Lowry *et al.*, 2004). However, by the time most bowhead whales reach the Chukchi Sea (October), they will likely no longer be feeding, or if feeding occurs it will be very limited. A reaction by zooplankton to a seismic impulse would only be relevant to whales if it caused concentrations of zooplankton to scatter. Pressure changes of sufficient magnitude to cause that type of reaction would probably occur only very close to the source. Impacts on zooplankton behavior are predicted to be inconsequential, and that would translate into negligible impacts on feeding mysticetes. Because ION will not start operations until early October, a substantial portion of the bowhead population that feeds in the Beaufort Sea during the fall westward migration will have already completed feeding and migrated out of the area before the proposed survey begins. Thus, the proposed activity is not expected to have any habitat-related effects on prey species or feeding marine mammals that could cause significant or long-term consequences for individual marine mammals or their populations.

Potential Impacts on Physical Environment

The proposed airgun operations will not result in any permanent impact on habitats used by marine mammals or to their food sources. The main impact issue associated with the proposed activities would be temporarily elevated noise levels and their associated direct effects on marine mammals, as discussed above, as well as the potential effects of icebreaking. The potential effects of icebreaking include locally altered ice conditions and the potential for the destruction of ringed seal lairs. However, ringed seals are not expected to enter these structures until later in the season, after the completion of ION's activities. Ice conditions at this time of year are typically quite variable with new leads opening and pressure ridges forming as wind and waves move the newly forming ice. This dynamic environment may be responsible for the mean date of permanent den entry on sea ice in the Beaufort Sea being later than on land (Amstrup and Gardner, 1994). The icebreaker and seismic vessel transit is not expected to significantly alter the formation of sea ice during this period.

Icebreaking would open leads in the sea ice along the vessel tracklines and could potentially destroy ringed seal lairs. However, ringed seals will not need lairs for pupping until the late winter or spring (after ION completes operations), so the impacts are not expected to impact pup survival. Ringed seals excavate lairs in snow that accumulates on sea ice near their breathing holes, and an individual seal maintains several breathing holes (Smith and Stirling, 1975). Ringed seal lairs are found in snow depths of 20–150 cm (8–59 in) (Smith and Stirling, 1975), and seals are not expected to enter lairs before the proposed seismic survey takes place. Damage to lairs caused by survey activities is not expected to exceed that which occurs naturally, and lair destruction in the early winter would likely not impact ringed seal survival. Lanugal pups born in the spring can become hypothermic if wetted, but by early winter they are robust to submersion having spent the entire summer at sea (Smith *et al.*, 1991). The highest density of ringed seals reported from aerial surveys conducted during spring when seals were emerging from lairs was in areas with water depth ranging from 5–35 m (16.4–115 ft) (Frost *et al.*, 2004). A relatively small proportion (5%; 364 km [226 mi]) of the proposed survey trackline is planned in that area.

During the seismic survey only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term, and fish are expected to return to their pre-disturbance behavior once the seismic activity ceases (McCauley *et al.*, 2000a, b; Santulli *et al.*, 1999; Pearson *et al.*, 1992). Thus, the proposed survey would have little, if any, impact on the abilities of marine mammals to feed in the area where seismic work is planned.

Refueling at sea has the potential to impact the marine environment if a spill were to occur. However, there are multiple procedures and safeguards in place to avoid such an accident. Prior to conducting a fuel transfer, the area around the vessels would be checked for the presence of marine mammals and operations delayed until the area is clear. A leak during refueling would be detected and the system shut down within a maximum of 30 seconds. The diesel oil transfer pump is rated at 50 IGPM @ 60 ft pressure head. Therefore, the maximum amount of oil that could be spilled during a transfer is 25 imperial gallons. This risk is reduced further with the standard use of 'dry-break' fittings for fuel transfers.

Based on the information provided in this section, the proposed activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Potential Impacts on Availability of Affected Species or Stock for Taking for Subsistence Uses

Relevant Subsistence Uses

Subsistence hunting and fishing continue to be prominent in the household economies and social welfare of some Alaskan residents, particularly among those living in small, rural villages (Wolfe and Walker, 1987). The disturbance and potential displacement of marine mammals by sounds from the proposed marine surveys are the principal concerns related to subsistence use of the area. Subsistence remains the basis for Alaska Native culture and community. Marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives. In rural Alaska, subsistence activities are often central to many aspects of human existence, including patterns of family life, artistic expression, and community religious and celebratory activities. Additionally, the animals taken for subsistence provide a significant portion of the food that will last the community throughout the year. The main species that are hunted include bowhead and

beluga whales, ringed, spotted, and bearded seals, walrus, and polar bears. (Both the walrus and the polar bear are under the USFWS' jurisdiction.) The importance of each of these species varies among the communities and is largely based on availability.

(1) Bowhead Whales

Bowhead whale hunting is a key activity in the subsistence economies of Barrow and other Native communities along the Beaufort Sea and Chukchi Sea coast. The whale harvests have a great influence on social relations by strengthening the sense of Inupiat culture and heritage in addition to reinforcing family and community ties.

An overall quota system for the hunting of bowhead whales was established by the International Whaling Commission in 1977. The quota is now regulated through an agreement between NMFS and the Alaska Eskimo Whaling Commission (AEWC). The AEWEC allots the number of bowhead whales that each whaling community may harvest annually during five-year periods (USDI/BLM, 2005). NMFS proposed continuation of the bowhead hunt for the five-year period 2008–2012 (NMFS, 2008b), and in June 2012, NMFS released a Draft Environmental Impact Statement proposing to continue the bowhead hunt for the period 2013–2017/2018 (NMFS, 2012).

The community of Barrow hunts bowhead whales in both the spring and fall during the whales' seasonal migrations along the coast. Often the bulk of the Barrow bowhead harvest is taken during the spring hunt. However, with larger quotas in recent years, it is common for a substantial fraction of the annual Barrow quota to remain available for the fall hunt. The communities of Nuiqsut and Kaktovik participate only in the fall bowhead harvest. The fall migration of bowhead whales that summer in the eastern Beaufort Sea typically begins in late August or September. Fall migration into Alaskan waters is primarily during September and October. However, in recent years a small number of bowheads have been seen or heard offshore from the Prudhoe Bay region during the last week of August (Treacy, 1993; LGL and Greeneridge, 1996; Greene, 1997; Greene *et al.*, 1999; Blackwell *et al.*, 2004).

In autumn, westward-migrating bowhead whales typically reach the Kaktovik and Cross Island (Nuiqsut hunters) areas by early September, at which points the hunts begin (Kaleak, 1996; Long, 1996; Galginaitis and Koski, 2002; Galginaitis and Funk, 2004, 2005; Koski *et al.*, 2005). Around late August, the hunters from Nuiqsut establish

camp on Cross Island from where they undertake the fall bowhead whale hunt. The hunting period starts normally in early September and may last as late as mid-October, depending mainly on ice and weather conditions and the success of the hunt. Most of the hunt occurs offshore in waters east, north, and northwest of Cross Island where bowheads migrate and not inside the barrier islands (Galginaitis, 2007). Hunters prefer to take bowheads close to shore to avoid a long tow during which the meat can spoil, but Braund and Moorehead (1995) report that crews may (rarely) pursue whales as far as 80 km (50 mi) offshore. Whaling crews use Kaktovik as their home base, leaving the village and returning on a daily basis. The core whaling area is within 19.3 km (12 mi) of the village with a periphery ranging about 13 km (8 mi) farther, if necessary. The extreme limits of the Kaktovik whaling limit would be the middle of Camden Bay to the west. The timing of the Kaktovik bowhead whale hunt roughly parallels the Cross Island whale hunt (Impact Assessment Inc, 1990b; SRB&A, 2009:Map 64). In recent years, the hunts at Kaktovik and Cross Island have usually ended by mid- to late September (prior to the proposed start date for ION's seismic survey).

The spring hunts at Wainwright and Barrow occur after leads open due to the deterioration of pack ice; the spring hunt typically occurs from early April until the first week of June. The location of the fall subsistence hunt depends on ice conditions and (in some years) industrial activities that influence the bowheads as they move west (Brower, 1996). In the fall, subsistence hunters use aluminum or fiberglass boats with outboards. At Barrow the fall hunt usually begins in mid-September, and mainly occurs in the waters east and northeast of Point Barrow. In 2007 however, all bowheads taken in fall at Barrow were harvested west of Pt. Barrow in the Chukchi Sea (Suydam *et al.*, 2008). The whales have usually left the Beaufort Sea by late October (Treacy, 2002a; 2002b).

The scheduling of this seismic survey was introduced to representatives of those concerned with the subsistence bowhead hunt including the AEWEC and the North Slope Borough (NSB) Department of Wildlife Management during a meeting in Barrow on December 15, 2009. Additional meetings occurred in 2010, 2011, and 2012 with more planned later in 2012 to share information regarding the survey with other members of the subsistence hunting community. The timing of the proposed geophysical survey in October–December will not affect the

spring bowhead hunt. The fall bowhead hunt may be occurring near Barrow during October, and operations will be coordinated with the AEW. ION will operate at the eastern end of the survey area until fall whaling in the Beaufort Sea near Barrow is finished. Fall bowhead whale hunts by members of the communities of Kaktovik and Nuiqsut will likely be completed prior to October.

Whaling communities of the Bering Strait area, such as Gambell and Savoonga on St. Lawrence Island, hunt bowheads in the late fall (typically around Thanksgiving). Because ION intends to conduct operations in the Beaufort and Chukchi Seas until early to mid-December, ION's vessel transits through the Bering Strait should not interfere with these late fall hunts.

(2) Beluga Whales

Beluga whales are available to subsistence hunters at Barrow in the spring when pack-ice conditions deteriorate and leads open up. Belugas may remain in the area through June and some-times into July and August in ice-free waters. Hunters usually wait until after the spring bowhead whale hunt is finished before turning their attention to hunting belugas. The average annual harvest of beluga whales taken by Barrow for 1962–1982 was five (MMS, 1996). The Alaska Beluga Whale Committee recorded that 23 beluga whales had been harvested by Barrow hunters from 1987 to 2002, ranging from 0 in 1987, 1988 and 1995 to the high of 8 in 1997 (Fuller and George, 1999; Alaska Beluga Whale Committee, 2002 in USDI/BLM, 2005). The timing of the proposed survey will not overlap with the beluga harvest.

(3) Ice Seals

Ringed seals are hunted mainly from October through June. Hunting for these smaller mammals is concentrated during winter because bowhead whales, bearded seals and caribou are available through other seasons. In winter, leads and cracks in the ice off points of land and along the barrier islands are used for hunting ringed seals. The seismic survey would be largely in offshore waters where the activities would not influence ringed seals in the nearshore areas where they are hunted.

The spotted seal subsistence hunt peaks in July and August, at least in 1987 to 1990, but involves few animals. Spotted seals typically migrate south by October to overwinter in the Bering Sea, and therefore the proposed October–December survey will not affect hunting of this species. Admiralty Bay, less than 60 km (37 mi) to the east of Barrow, is

a location where spotted seals are harvested. Spotted seals are also occasionally hunted in the area off Point Barrow and along the barrier islands of Elson Lagoon to the east (USDI/BLM, 2005). The average annual spotted seal harvest by the community of Barrow from 1987–1990 was one (Braund *et al.*, 1993)

Bearded seals, although not favored for their meat, are important to subsistence activities in Barrow because of their skins. Six to nine bearded seal hides are used by whalers to cover each of the skin-covered boats traditionally used for spring whaling. Because of their valuable hides and large size, bearded seals are specifically sought. Bearded seals are harvested during the summer months in the Beaufort Sea (USDI/BLM, 2005). The animals inhabit the environment around the ice floes in the drifting ice pack, so hunting usually occurs from boats in the drift ice. Braund *et al.* (1993) mapped the majority of bearded seal harvest sites from 1987 to 1990 as being within ~24 km (~15 mi) of Point Barrow. The average annual take of bearded seals by the Barrow community from 1987 to 1990 was 174. Because bearded seal hunting typically occurs during the summer months, the proposed October–December survey is not expected to affect bearded seal harvests.

Potential Impacts to Subsistence Uses

NMFS has defined “unmitigable adverse impact” in 50 CFR 216.103 as: “* * * an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.”

Seismic surveys and associated icebreaking operations have the potential to impact marine mammals hunted by Native Alaskans. In the case of cetaceans, the most common reaction to anthropogenic sounds (as noted previously in this document) is avoidance of the ensonified area. In the case of bowhead whales, this often means that the animals could divert from their normal migratory path by up to several kilometers. Additionally, general vessel presence in the vicinity of traditional hunting areas could negatively impact a hunt.

In the case of subsistence hunts for bowhead whales in the Beaufort and Chukchi Seas, there could be an adverse impact on the hunt if the whales were deflected seaward (further from shore) in traditional hunting areas. The impact would be that whaling crews would have to travel greater distances to intercept westward migrating whales, thereby creating a safety hazard for whaling crews and/or limiting chances of successfully striking and landing bowheads. Native knowledge indicates that bowhead whales become increasingly “skittish” in the presence of seismic noise. Whales are more wary around the hunters and tend to expose a much smaller portion of their back when surfacing (which makes harvesting more difficult). Additionally, natives report that bowheads exhibit angry behaviors in the presence of seismic, such as tail-slapping, which translate to danger for nearby subsistence harvesters.

However, due to its proposed time and location, ION's proposed in-ice seismic survey in the Beaufort and Chukchi Seas would be unlikely to result in the aforementioned impacts. As discussed earlier in detail, the only potential impacts on subsistence use of marine mammals from ION's proposed icebreaking seismic survey during October–December period are the fall bowhead hunt and ringed seal harvest. Nevertheless, the proposed seismic survey is expected to occur in waters far offshore from the regular seal hunting areas, and ION indicates it would elect to operate at the eastern end of the survey area until fall whaling in the Beaufort Sea near Barrow is finished, thus reducing the likelihood of interfering with subsistence use of marine mammals in the vicinity of the project area.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) 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 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.

For the proposed ION in-ice seismic survey in the Beaufort and Chukchi Seas, ION worked with NMFS and proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity as a result of the marine seismic survey activities.

As part of the application, ION submitted to NMFS a Marine Mammal Monitoring and Mitigation Program (4MP) for its in-ice seismic survey in the Beaufort and Chukchi Seas during the 2012 fall season. The objectives of the 4MP are:

- To ensure that disturbance to marine mammals and subsistence hunts is minimized and all permit stipulations are followed,
- To document the effects of the proposed survey activities on marine mammals, and
- To collect baseline data on the occurrence and distribution of marine mammals in the study area.

The 4MP may be modified or supplemented based on comments or new information received from the public during the public comment period or from the peer review panel (see the “Monitoring Plan Peer Review” section later in this document).

Mitigation Measures Proposed in ION’s IHA Application

ION listed the following protocols to be implemented during its marine seismic survey in the Beaufort and Chukchi Seas.

(1) Exclusion Zones

Under current NMFS guidelines, “exclusion zones” for marine mammals

around industrial sound sources are customarily defined as the distances within which received sound levels are ≥180 dB re 1 µPa (rms) for cetaceans and ≥190 dB re 1 µPa (rms) for pinnipeds. These criteria are based on an assumption that sound energy at lower received levels will not injure these animals or impair their hearing abilities but that higher received levels might have some such effects. Disturbance or behavioral effects to marine mammals from underwater sound may occur after exposure to sound at distances greater than the exclusion zone (Richardson *et al.*, 1995; see above).

Received sound levels were modeled for the full 26 airgun, 4,450 in³ array in relation to distance and direction from the source (Zykov *et al.*, 2010). Based on the model results, Table 1 in this document shows the distances from the airguns where ION predicts that received sound levels will drop below 190, 180, and 160 dB re 1 µPa (rms). A single 70-in³ airgun would be used during turns or if a power down of the full array (see below) is necessary due to the presence of a marine mammal within or about to enter the applicable exclusion zone of the full airgun array. To model the source level of the 70-in³ airgun, ION used the measurements of a 30-in³ airgun. Underwater sound propagation of a 30-in³ airgun was

measured in <100 m (328 ft) of water near Harrison Bay in 2007, and results were reported in Funk *et al.* (2008). The constant term of the resulting equation was increased by 2.45 dB based on the difference between the volume of the two airguns [2.45 = 20Log(70/30)^(1/3)]. The 190 and 180 dB (rms) distances for the 70-in³ airgun from the adjusted equation, 19 m (62 ft) and 86 m (282 ft) respectively, would be used as the exclusion zones around the single 70 in³ airgun in all water depths until results from field measurements are available.

An acoustics contractor would perform the direct measurements of the received levels of underwater sound versus distance and direction from the energy source arrays using calibrated hydrophones (see below “Sound Source Verification” in the “Proposed Monitoring” section). The acoustic data would be analyzed as quickly as reasonably practicable in the field and used to verify (and if necessary adjust) the size of the exclusion zones. The field report will be made available to NMFS and the Protected Species Observers (PSOs) within 120 hrs of completing the measurements. The mitigation measures to be implemented at the 190 and 180 dB (rms) sound levels would include power downs and shut downs as described below.

TABLE 1—MARINE MAMMAL EXCLUSION ZONES FROM THE 26 AIRGUN, 4,450-IN³ ARRAY, FOR SPECIFIC CATEGORIES BASED ON THE WATER DEPTH

rms (dB re. 1 µPa)	Exclusion and disturbance zones (meters)		
	less than 100 m	100 m–1,000 m	more than 1,000 m
190	600	180	180
180	2,850	660	580
160	27,800	42,200	31,600

(2) Speed or Course Alteration

If a marine mammal (in water) is detected outside the exclusion zone and, based on its position and the relative motion, is likely to enter the exclusion zone, the vessel’s speed and/or direct course shall be changed in a manner that also minimizes the effect on the planned objectives when such a maneuver is safe.

Another measure proposes to avoid concentrations or groups of whales by all vessels in transit under the direction of ION. Operators of vessels should, at all times, conduct their activities at the maximum distance possible from such concentrations of whales.

All vessels during transit shall be operated at speeds necessary to ensure no physical contact with whales occurs.

If any barge or transit vessel approaches within 1.6 km (1 mi) of observed bowhead whales, the vessel operator shall take reasonable precautions to avoid potential interaction with the bowhead whales by taking one or more of the following actions, as appropriate:

(A) Reducing vessel speed to less than 5 knots within 300 yards (900 feet or 274 m) of the whale(s);

(B) Steering around the whale(s) if possible;

(C) Operating the vessel(s) in such a way as to avoid separating members of a group of whales from other members of the group;

(D) Operating the vessel(s) to avoid causing a whale to make multiple changes in direction; and

(E) Checking the waters immediately adjacent to the vessel(s) to ensure that

no whales will be injured when the propellers are engaged.

When weather conditions require, such as when visibility drops, adjust vessel speed accordingly to avoid the likelihood of injury to whales.

In the event that any aircraft (such as helicopters) are used to support the planned survey, the proposed mitigation measures below would apply:

(A) Under no circumstances, other than an emergency, shall aircraft be operated at an altitude lower than 1,000 feet above sea level (ASL) when within 0.3 mile (0.5 km) of groups of whales.

(B) Helicopters shall not hover or circle above or within 0.3 mile (0.5 km) of groups of whales.

(3) Ramp Ups

A ramp up of an airgun array provides a gradual increase in sound levels and involves a step-wise increase in the number and total volume of airguns firing until the full volume is achieved. The purpose of a ramp up is to “warn” marine mammals in the vicinity of the airguns and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities.

During the proposed seismic survey program, the seismic operator will ramp up the airgun arrays slowly. Full ramp ups (*i.e.*, from a cold start after a shut down or when no airguns have been firing) will begin by firing a single airgun in the array. A full ramp up, following a cold start, can be applied if the exclusion zone has been free of marine mammals for a consecutive 30-minute period. The entire exclusion zone must have been visible during these 30 minutes. If the entire exclusion zone is not visible, then ramp up from a cold start cannot begin.

Ramp up procedures from a cold start shall be delayed if a marine mammal is sighted within the exclusion zone during the 30-minute period prior to the ramp up. The delay shall last until the marine mammal(s) has been observed to leave the exclusion zone or until the animal(s) is not sighted for at least 15 or 30 minutes. The 15 minutes applies to small odontocetes and pinnipeds, while a 30 minute observation period applies to baleen whales and large toothed whales.

A ramp up, following a shutdown, can be applied if the marine mammal(s) for which the shutdown occurred has been observed to leave the exclusion zone or until the animal(s) is not sighted for at least 15 minutes (small odontocetes and pinnipeds) or 30 minutes (baleen whales and large toothed whales).

If, for any reason, electrical power to the airgun array has been discontinued for a period of 10 minutes or more, ramp-up procedures shall be implemented. Only if the PSO watch has been suspended, a 30-minute clearance of the exclusion zone is required prior to commencing ramp-up. Discontinuation of airgun activity for less than 10 minutes does not require a ramp-up.

The seismic operator and PSOs shall maintain records of the times when ramp-ups start and when the airgun arrays reach full power.

During turns and transit between seismic transects, the 70 in³ mitigation gun will remain operational. The ramp up procedure will still be followed

when increasing the source levels from one airgun to the full array. PSOs will be on duty whenever the airguns are firing during daylight and during the 30 minute periods prior to full ramp ups. Daylight will occur for ~11 hours/day at the start of the survey in early October diminishing to ~3 hours/day in mid-November.

(4) Power Down Procedures

A power down involves decreasing the number of airguns in use such that the radii of the 190 and 180 dB re 1 μ Pa (rms) zones are decreased to the extent that observed marine mammals are not in the applicable exclusion zone. A power down may also occur when the vessel is moving from one seismic line to another. During a power down, only one airgun is operated. The continued operation of one airgun is intended to (a) alert marine mammals to the presence of the seismic vessel in the area, and (b) retain the option of initiating a ramp up to full array under poor visibility conditions. In contrast, a shutdown is when all airgun activity is suspended (see next section).

If a marine mammal is detected outside the exclusion zone but is likely to enter the exclusion zone, and if the vessel's speed and/or course cannot be changed to avoid having the mammal enter the exclusion zone, the airguns may (as an alternative to a complete shutdown) be powered down before the mammal is within the exclusion zone. Likewise, if a mammal is already within the exclusion zone when first detected, the airguns will be powered down immediately if this is a reasonable alternative to a complete shutdown. During a power down of the array, the number of guns operating will be reduced to a single 70 in³ airgun. The pre-season estimates of the 190 dB re 1 μ Pa (rms) and 180 dB re 1 μ Pa (rms) exclusion zones around the power down source are 19 m (62 ft) and 86 m (282 ft), respectively. The 70 in³ airgun power down source will be measured during acoustic sound source measurements conducted at the start of seismic operations. If a marine mammal is detected within or near the applicable exclusion zone around the single 70 in³ airgun, it too will be deactivated, resulting in a complete shutdown (see next subsection).

Marine mammals hauled out on ice may enter the water when approached closely by a vessel. If a marine mammal on ice is detected by PSOs within the exclusion zones, it will be watched carefully in case it enters the water. In the event the animal does enter the water and is within an applicable exclusion zone of the airguns during

seismic operations, a power down or other necessary mitigation measures will immediately be implemented. If the animal does not enter the water, it will not be exposed to sounds at received levels for which mitigation is required; therefore, no mitigation measures will be taken.

Following a power down, operation of the full airgun array will not resume until the marine mammal has cleared the exclusion zone. The animal will be considered to have cleared the exclusion zone if it:

- Is visually observed to have left the exclusion zone, or
- Has not been seen within the zone for 15 min in the case of pinnipeds (excluding walruses) or small odontocetes, or
- Has not been seen within the zone for 30 min in the case of mysticetes or large odontocetes.

(5) Shutdown Procedures

The operating airgun(s) will be shut down completely if a marine mammal approaches or enters the then-applicable exclusion zone and a power down is not practical or adequate to reduce exposure to less than 190 or 180 dB re 1 μ Pa (rms). The operating airgun(s) will also be shut down completely if a marine mammal approaches or enters the estimated exclusion zone around the reduced source (one 70 in³ airgun) that will be used during a power down.

Airgun activity will not resume until the marine mammal has cleared the exclusion zone. The animal will be considered to have cleared the exclusion zone if it is visually observed to have left the exclusion zone, or if it has not been seen within the zone for 15 min (pinnipeds and small odontocetes) or 30 min (mysticetes and large odontocetes). Ramp up procedures will be followed during resumption of full seismic operations after a shutdown of the airgun array.

Additional Mitigation Measures Proposed by NMFS

In addition to ION's proposed mitigation measures discussed above, NMFS proposes the following additional measures during the long periods of darkness when the seismic survey is proposed. Specifically in this case, With the exception of turns when starting a new trackline, or short transits or maintenance with a duration of less than one hour, NMFS does not recommend keeping one airgun (also referred to as the “mitigation gun” in past IHAs) firing for long periods of time during darkness or other periods of poor visibility, as it would only introduce more noise into the water with no

potential near-term avoidance benefits for marine mammals.

Furthermore, NMFS proposes that the airgun array be shut down if a pinniped is sighted hauled out on ice within the underwater exclusion zone (received level 190 dB re 1 μ Pa (rms)). Even though the pinniped may not be exposed to in-air noise levels that could be considered a take, the presence of the seismic vessel could prompt the animal to slip into the water, and thus be exposed to a high intensity sound field as a result.

Mitigation Measures for Subsistence Activities

(1) Subsistence Mitigation Measures

Since ION's proposed October–December in-ice seismic survey in the Beaufort and Chukchi Seas is not expected to affect subsistence use of marine mammals by Alaskan Natives due to its proposed time and location, no specific mitigation measures are proposed other than those general mitigation measures discussed above.

(2) Plan of Cooperation (POC)

Regulations at 50 CFR 216.104(a)(12) require IHA applicants for activities that take place in Arctic waters to provide a POC or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes.

ION has developed a “Plan of Cooperation” (POC) for the proposed 2012 seismic survey in the Beaufort and Chukchi Seas in consultation with representatives of Barrow, Nuiqsut, Kaktovik, and Wainwright and subsistence users within these communities. NMFS received a final draft of the POC on May 22, 2012. The final draft POC is posted on NMFS Web site at <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

ION will continue to engage with the communities of Barrow, Nuiqsut, Kaktovik, and Wainwright to identify and avoid areas of potential conflict. The meetings with stakeholders that took place in 2010 and 2011 are listed in Table 16 and Table 17, respectively, of ION's IHA application. The meetings that have taken place in 2012, as well as additional proposed meetings, are listed in Table 18 of ION's IHA application. Members of marine mammal co-management groups and groups that address subsistence activities were specifically notified of the public meetings so that they could provide input. A record of all consultation with subsistence users will

be included in the 2012 Final POC document.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal 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 ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth “requirements pertaining to the monitoring and reporting of such taking”. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs 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 in the proposed action area.

Proposed Monitoring Measures

The monitoring plan proposed by ION can be found in the 4MP. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period. A summary of the primary components of the plan follows.

(1) Protected Species Observers

Vessel-based monitoring for marine mammals will be performed by trained PSOs throughout the period of survey

activities, supplemented by the officers on duty, to comply with expected provisions in the IHA (if issued). The observers will monitor the occurrence and behavior of marine mammals near the survey vessels during all daylight periods. PSO duties will include watching for and identifying marine mammals; recording their numbers, distances, and reactions to the survey operations; and documenting “take by harassment” as defined by NMFS.

A. Number of Observers

A sufficient number of PSOs will be required onboard the survey vessel to meet the following criteria:

- 100% monitoring coverage during all periods of survey operations in daylight;
- Maximum of 4 consecutive hours on watch per PSO; and
- Maximum of ~12 hours of watch time per day per PSO.

An experienced field crew leader will supervise the PSO team onboard the survey vessels. ION's proposed survey will occur in October–December when the number of hours of daylight is significantly reduced, and thus will require fewer PSOs to be aboard the survey vessel than required for surveys conducted during the open water season with nearly 24 hrs of daylight. PSOs aboard the icebreaker operating 0.5–1 km (0.31–0.62 mi) ahead of the survey vessel will provide early detection of marine mammals along the survey track. Three PSOs will be stationed aboard the icebreaker *Polar Prince* to take advantage of this forward operating platform and provide advance notice of marine mammals to the PSO on the survey vessel. Three PSOs will be stationed aboard the survey vessel *Geo Arctic* to monitor the exclusion zones centered on the airguns and to request mitigation actions when necessary.

B. Observer Qualifications and Training

Crew leaders and most other biologists serving as observers will be individuals with recent experience as observers during one or more seismic monitoring projects in Alaska, the Canadian Beaufort Sea, or other offshore areas.

Biologist-observers will have previous marine mammal observation experience, and field crew leaders will be highly experienced with previous vessel-based marine mammal monitoring and mitigation projects. Résumés for all individuals will be provided to NMFS for review and acceptance of their qualifications. Inupiat observers will be experienced in the region, familiar with the marine mammals of the area, and complete an approved observer training

course designed to familiarize individuals with monitoring and data collection procedures. A PSO handbook, adapted for the specifics of the planned survey program, will be prepared and distributed beforehand to all PSOs (see summary below).

Biologist-observers and Inupiat observers will also complete a two or three-day training and refresher session together on marine mammal monitoring, to be conducted shortly before the anticipated start of the seismic survey. When possible, experienced observers will be paired with inexperienced observers. The training session(s) will be conducted by qualified marine mammalogists with extensive crew-leader experience during previous vessel-based seismic monitoring programs.

Primary objectives of the training include:

- Review of the marine mammal monitoring plan for this project, including any amendments specified by NMFS in the IHA (if issued);
- Review of marine mammal sighting, identification, and distance estimation methods using visual aids;
- Review of operation of specialized equipment (reticle binoculars, night vision devices (NVDs), and GPS system);
- Review of, and classroom practice with, data recording and data entry systems, including procedures for recording data on marine mammal sightings, monitoring operations, environmental conditions, and entry error control. These procedures will be implemented through use of a customized computer database and laptop computers;
- Review of the specific tasks of the Inupiat Communicator; and
- Exam to ensure all observers can correctly identify marine mammals and record sightings.

C. PSO Handbook

A PSOs' Handbook will be prepared for ION's monitoring program. Handbooks contain maps, illustrations, and photographs, as well as text, and are intended to provide guidance and reference information to trained individuals who will participate as PSOs. The following topics will be covered in the PSO Handbook for the ION project:

- Summary overview descriptions of the project, marine mammals and underwater noise, the marine mammal monitoring program (vessel-based, aerial, acoustic measurements), the NMFS' IHA (if issued) and other regulations/permits/agencies, the Marine Mammal Protection Act;

- Monitoring and mitigation objectives and procedures, initial exclusion zones;
- Responsibilities of staff and crew regarding the marine mammal monitoring plan;
- Instructions for ship crew regarding the marine mammal monitoring plan;
- Data recording procedures: codes and coding instructions, common coding mistakes, electronic database; navigational, marine physical, field data sheet;
- List of species that might be encountered: identification cues, natural history information;
- Use of specialized field equipment (reticle binoculars, NVDs, forward-looking infrared (FLIR) system);
- Reticle binocular distance scale;
- Table of wind speed, Beaufort wind force, and sea state codes;
- Data storage and backup procedures;
- Safety precautions while onboard;
- Crew and/or personnel discord; conflict resolution among PSOs and crew;
- Drug and alcohol policy and testing;
- Scheduling of cruises and watches;
- Communication availability and procedures;
- List of field gear that will be provided;
- Suggested list of personal items to pack;
- Suggested literature, or literature cited; and
- Copies of the NMFS IHA and USFWS LOA when available.

(2) Monitoring Methodology

A. General Monitoring Methodology

The observer(s) will watch for marine mammals from the best available vantage point on the survey vessels, typically the bridge. The observer(s) will scan systematically with the unaided eye and 7×50 reticle binoculars, supplemented during good visibility conditions with 20×60 image-stabilized Zeiss Binoculars or Fujinon 25×150 "Big-eye" binoculars, a thermal imaging (FLIR) camera, and night-vision equipment when needed (see below). Personnel on the bridge will assist the marine mammal observer(s) in watching for marine mammals.

Information to be recorded by observers will include the same types of information that were recorded during recent monitoring programs associated with Industry activity in the Arctic (*e.g.*, Ireland *et al.*, 2009). When a mammal sighting is made, the following information about the sighting will be recorded:

- Species, group size, age/size/sex categories (if determinable), behavior

when first sighted and after initial sighting, heading (if determinable), bearing and distance from observer, apparent reaction to activities (*e.g.*, none, avoidance, approach, etc.), closest point of approach, and pace;

- Additional details for any unidentified marine mammal or unknown observed;
- Time, location, speed, and activity of the vessel, sea state, ice cover, visibility, and sun glare; and
- The positions of other vessel(s) in the vicinity of the observer location.

The ship's position, speed of the vessel, water depth, sea state, ice cover, visibility, airgun status (ramp up, mitigation gun, or full array), and sun glare will also be recorded at the start and end of each observation watch, every 30 minutes during a watch, and whenever there is a change in any of those variables.

Distances to nearby marine mammals will be estimated with binoculars containing a reticle to measure the vertical angle of the line of sight to the animal relative to the horizon. Observers may use a laser rangefinder to test and improve their abilities for visually estimating distances to objects in the water. However, previous experience has shown that a Class 1 eye-safe device was not able to measure distances to seals more than about 70 m (230 ft) away. The device was very useful in improving the distance estimation abilities of the observers at distances up to about 600 m (1,968 ft), the maximum range at which the device could measure distances to highly reflective objects such as other vessels. Humans observing objects of more-or-less known size via a standard observation protocol, in this case from a standard height above water, quickly become able to estimate distances within about ±20% when given immediate feedback about actual distances during training.

When a marine mammal is seen within the exclusion zone applicable to that species, the geophysical crew will be notified immediately so that mitigation measures required by the IHA (if issued) can be implemented. It is expected that the airgun array will be shut down within several seconds, often before the next shot would be fired, and almost always before more than one additional shot is fired. The protected species observer will then maintain a watch to determine when the mammal(s) appear to be outside the exclusion zone such that airgun operations can resume.

ION will provide or arrange for the following specialized field equipment for use by the onboard PSOs: 7 × 50

reticle binoculars, Big-eye binoculars or high power image-stabilized binoculars, GPS unit, laptop computers, night vision binoculars, digital still and possibly digital video cameras in addition to the above mentioned FLIR camera system (see below).

B. Monitoring At Night and In Poor Visibility

Night-vision equipment (Generation 3 binocular image intensifiers, or equivalent units) will be available for use when/if needed. Past experience with NVDs in the Beaufort Sea and elsewhere has indicated that NVDs are not nearly as effective as visual observation during daylight hours (*e.g.*, Harris *et al.*, 1997, 1998; Moulton and Lawson, 2002). A FLIR camera system mounted on a high point near the bow of the icebreaker will also be available to assist with detecting the presence of seals and polar bears on ice and, perhaps also in the water, ahead of the airgun array. The FLIR system detects thermal contrasts and its ability to sense these differences is not dependent on daylight.

Additional details regarding the monitoring protocol during NVD and FLIR system use has been developed in order to collect data in a standardized manner such that the effectiveness of the two devices can be analyzed and compared.

B. (1) FLIR and NVD Monitoring

The infrared system is able to detect differences in the surface temperature of objects making it potentially useful during both daylight and darkness periods. NVDs, or light intensifiers, amplify low levels of ambient light from moonlight or sky glow light in order to provide an image to the user. Both technologies have the potential to improve monitoring and mitigation efforts in darkness. However, they remain relatively unproven in regards to their effectiveness under the conditions and in the manner of use planned for this survey. The protocols for FLIR and NVD use and data collection described below are intended to collect the necessary data in order to evaluate the ability of these technologies to aid in the detection of marine mammals from a vessel.

- All PSOs will monitor for marine mammals according to the procedures outlined in the PSO handbook.
- One PSO will be responsible for monitoring the FLIR system (IR-PSO) during most darkness and twilight periods. The on-duty IR-PSO will monitor the IR display and alternate between the two

search methods described below. If a second PSO is on watch, they will scan the same area as the FLIR using the NVDs for comparison. The two PSOs will coordinate what area is currently being scanned.

- The IR-PSO should rotate between the search methods (see below) every 30 minutes in the suggested routine (see below):
 - 00:00–00:30: Method I
 - 00:30–01:00: Method II, Port side
 - 01:00–01:30: Method I
 - 01:30–02:00: Method II, Starboard side

B. (2) FLIR Search Methods

The FLIR system consists of a camera that will be mounted on high point in front of the vessel. The camera is connected to a joystick control unit (JCU) and a display monitor that will be located on the bridge of the vessel. The IR-PSO will manually control the view that is displayed by adjusting the pan (360° continuous pan) and tilt (+/–90° tilt) settings using the JCU. The FLIR manufacturer has indicated that they have tested the FLIR unit (model M626L) to –25 °C (–13 °F), but expect that it will operate at colder temperatures. During the time of the proposed seismic survey, the average minimum temperatures at Prudhoe Bay in October and November are +10 °F and –10 °F, respectively. Colder temperatures are certainly likely at times, but overall the temperatures should generally be within the operational range of the equipment.

As noted above, two different search methods will be implemented for FLIR monitoring and results from the two will be compared. The first method involves a back-and-forth panning motion and the second utilizes the FLIR unit focused on a fixed swath ahead and to one side of the vessel track:

Method I: Set the horizontal tilt of the camera to an angle that provides an adequate view out in front of the vessel and also provides good resolution to potential targets (this will likely mean that the lower portion of the view displayed on the monitor is of an area relatively close to the vessel (<100 m [328 ft]) while the middle and upper portions of the view are at greater distances (500–2,000 m [1,640–6,562 ft]). Pan back and forth across the forward 180° of the vessels heading at a slow-scanning rate of approximately 1–2°/sec, as one would with binoculars. This method is intended to replicate the type of observations conducted using binoculars and cover a relatively wider swath compared to Method II. It should produce sightings data that can be analyzed using line-transect

methodologies to estimate marine mammal densities in the survey area.

Method II: Set the horizontal tilt of the camera to an angle that provides an adequate view out in front of the vessel (similar or identical to the above), and then set the camera at a fixed position that creates a swath of view off the bow and to one side of the vessel (see Figure 1 of ION's monitoring plan). This method essentially establishes a fixed-strip width that is intended to produce sightings data that can be analyzed using strip-transect methodologies to estimate marine mammal densities.

B. (3) NVD Methods

The NVDs are goggles worn by the observer and are to be used in a similar fashion as binoculars. When observing in conjunction with the FLIR system, the objective will be to replicate the monitoring methodology being employed by the FLIR system. Method I requires a full 180° scan (or as large of a range as possible from the observer's location) with the NVDs, and Method II requires a focused scan of the ~60° swath being monitored by the FLIR system.

C. Field Data-Recording, Verification, Handling, and Security

The observers will record their observations onto datasheets or directly into handheld computers. During periods between watches and periods when operations are suspended, those data will be entered into a laptop computer running a custom computer database. The accuracy of the data entry will be verified in the field by computerized validity checks as the data are entered, and by subsequent manual checking of the database printouts. These procedures will allow initial summaries of data to be prepared during and shortly after the field season, and will facilitate transfer of the data to statistical, graphical or other programs for further processing. Quality control of the data will be facilitated by (1) the start-of-season training session, (2) subsequent supervision by the onboard field crew leader, and (3) ongoing data checks during the field season.

The data will be backed up regularly onto CDs and/or USB disks, and stored at separate locations on the vessel. If possible, data sheets will be photocopied daily during the field season. Data will be secured further by having data sheets and backup data CDs carried back to the Anchorage office during crew rotations.

In addition to routine PSO duties, observers will use Traditional Knowledge and Natural History datasheets to record observations that

are not captured by the sighting or effort data. Copies of these records will be available to observers for reference if they wish to prepare a statement about their observations. If prepared, this statement would be included in the 90-day and final reports documenting the monitoring work.

D. Effort and Sightings Data Collection Methods

Observation effort data will be designed to capture the amount of PSO effort itself, environmental conditions that impact an observer's ability to detect marine mammals, and the equipment and method of monitoring being employed. These data will be collected every 30 minutes or when an effort variable changes (*e.g.*, change in the equipment or method being used to monitor, on/off-signing PSO, etc.), and will be linked to sightings data. Effort and sightings data forms are the same forms used during other marine mammal monitoring in the open water season, but additional fields have been included to capture information specific to monitoring in darkness and to more accurately describe the observation conditions. The additional fields include the following.

- Observation Method: FLIR, NVD, spotlight, eye (naked eye or regular binoculars), or multiple methods. This data is collected every 30 minutes with the Observer Effort form and with every sighting.
- Cloud Cover: Percentage. This can impact lighting conditions and reflectivity.
- Precipitation Type: Fog, rain, snow, or none.
- Precipitation Reduced Visibility: Confirms whether or not visibility is reduced due to precipitation. This will be compared to the visibility distance (# km) to determine when visibility is reduced due to lighting conditions versus precipitation.
- Daylight Amount: Daylight, twilight, dark. The addition of the twilight field has been included to record observation periods where the sun has set and observation distances may be reduced due to lack of light.
- Light Intensity: Recorded in footcandles (fc) using an incident light meter. This procedure was added to quantify the available light during twilight and darkness periods and may allow for light-intensity bins to be used during analysis.

Analysis of the sightings data will include comparisons of nighttime (FLIR and NVD) sighting rates to daylight sighting rates. FLIR and NVD analysis will be independent of each other and according to method (I or II) used.

Comparison of NVD and FLIR sighting rates will allow for a comparison of marine mammal detection ability of the two methods. However, results and analyses could be limited if relatively few sightings are recorded during the survey.

(3) Acoustic Monitoring Plan

A. Sound Source Measurements

As described above, received sound levels were modeled for the full 26 airgun, 4,450 in³ array in relation to distance and direction from the source (Zykov *et al.*, 2010). These modeled distances will be used as temporary exclusion zones until measurements of the airgun sound source are conducted. The measurements will be made at the beginning of the field season, and the measured radii will be used for the remainder of the survey period. An acoustics contractor with experience in the Arctic conducting similar measurements in recent years will use their equipment to record and analyze the underwater sounds and write the summary reports as described below.

The objectives of the sound source measurements planned for 2012 in the Beaufort Sea will be (1) to measure the distances in potentially ice covered waters in the broadside and endfire directions at which broadband received levels reach 190, 180, 170, 160, and 120 dB re 1 μ Pa (rms) for the energy source array combinations that may be used during the survey activities, and (2) measure the sounds produced by the icebreaker and seismic vessel as they travel through sea ice. Conducting the sound source and vessel measurements in ice-covered waters using bottom founded recorders creates a risk of not being able to retrieve the recorders and analyze the data until the following year. If the acoustic recorders are not deployed or are unable to be recovered because of too much sea ice, ION will use measurements of the same airgun source taken in the Canadian Beaufort Sea in 2010, along with sound velocity measurements taken in the Alaskan Beaufort Sea at the start of the 2012 survey to update the propagation model and estimate new exclusion zones. These modeled results will then be used for mitigation purposes during the remainder of the survey.

The airgun configurations measured will include at least the full 26 airgun array and the single 70 in³ mitigation airgun that will be used during power downs. The measurements of airgun array sounds will be made by an acoustics contractor at the beginning of the survey and the distances to the various radii will be reported as soon as

possible after recovery of the equipment. The primary area of concern will be the 190 and 180 dB re 1 μ Pa (rms) exclusion zones for pinnipeds and cetaceans, respectively, and the 160 dB re 1 μ Pa Level B harassment (for impulsive sources) radii. In addition to reporting the radii of specific regulatory concern, nominal distances to other sound isopleths down to 120 dB re 1 μ Pa (rms) will be reported in increments of 10 dB.

Data will be previewed in the field immediately after download from the hydrophone instruments. An initial sound source analysis will be supplied to NMFS and the airgun operators within 120 hours of completion of the measurements. The report will indicate the distances to sound levels based on fits of empirical transmission loss formulae to data in the endfire and broadside directions. A more detailed report will be issued to NMFS as part of the 90-day report following completion of the acoustic program.

B. Seismic Hydrophone Streamer Recordings of Vessel Sounds

Although some measurements of icebreaking sounds have previously been reported, acoustic data on vessels traveling through relatively light ice conditions, as will be the case during the proposed survey, are not available. In order to gather additional information on the sounds produced by this type of icebreaking, ION proposes to use the hydrophones in the seismic streamer on a routine basis throughout the survey. Once every hour the airguns would not be fired at 2 consecutive intervals (one seismic pulse interval is typically ~18 seconds, so there will be ~54 seconds between seismic pulses at this time) and instead a period of background sounds would be recorded, including the sounds generated by the vessels. Over the course of the survey this should generate as many as 750 records of vessel sounds traveling through various ice conditions (from open water to 100% cover juvenile first year ice or lighter multi-year ice). The acoustic data during each sampling period from each hydrophone along the 9 km (5.6 mi) streamer would be analyzed and used to estimate the propagation loss of the vessel sounds. The acoustic data received from the hydrophone streamer would be recorded at an effective bandwidth of 0–400 Hz. In order to estimate sound energy over a larger range of frequencies (broadband), results from previous measurements of icebreakers could be generalized and added to the data collected during this project.

C. Over-winter Acoustic Recorders

In order to collect additional data on the propagation of sounds produced by icebreaking and seismic airguns in ice-covered waters, as well as on vocalizing marine mammals, ION intends to collaborate with other Industry operators to deploy acoustic recorders in the Alaskan Beaufort Sea in fall 2012, to be retrieved during the 2013 open-water season.

During winter 2011–2012, AURAL acoustic recorders were deployed at or near each of the 5 acoustic array sites established by Shell for monitoring the fall bowhead whale migration through the Beaufort Sea, as well as one site near the shelf break in the central Alaskan Beaufort Sea. These recorders will be retrieved in July 2012, when Shell deploys Directional Autonomous Seafloor Acoustic Recorders (DASARs) at 5 array locations. When the DASAR arrays are retrieved in early October, ION intends to coordinate with Shell to re-deploy the 6 AURAL recorders to the same locations used during the 2011–2012 winter. Redeploying the recorders in the same locations will provide comparable data from a year with little to no offshore industrial activity (2011) to a year with more offshore industrial activity (2012). Acoustic data from the over-winter recorders will be analyzed to address the following objectives:

- Characterize the sounds and propagation distances produced by ION's source vessel, icebreaker, and airguns on and to the edge of the U.S. Beaufort Sea shelf,
- Characterize ambient sounds and marine mammal calls during October and November to assess the relative effect of ION's seismic survey on the background conditions, and to characterize marine mammal calling behavior, and
- Characterize ambient sound and enumerate marine mammal calls through acoustic sampling of the environment from December 2012 through July 2013, when little or no anthropogenic sounds are expected.

Monitoring Plan Peer Review

The MMPA requires that monitoring plans be independently peer reviewed "where the proposed activity may affect the availability of a species or stock for taking for subsistence uses" (16 U.S.C. 1371(a)(5)(D)(ii)(III)). Regarding this requirement, NMFS' implementing regulations state, "Upon receipt of a complete monitoring plan, and at its discretion, [NMFS] will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan,

schedule a workshop to review the plan" (50 CFR 216.108(d)).

NMFS convened independent peer review panels to review ION's mitigation and monitoring plan in its IHA applications submitted in 2010 and 2011 for taking marine mammals incidental to the proposed seismic survey in the Beaufort and Chukchi Seas, during 2010 and 2011. The panels met on March 25 and 26, 2010, and on March 9, 2011, and provided their final report to NMFS on April 22, 2010 and on April 27, 2011, respectively. The full panel reports can be viewed at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

ION's proposed 2012 action is essentially the same as described in its 2010 and 2011 IHA applications. NMFS worked with ION in 2010 and 2011 to address the peer review panels' recommendations on its 2010 and 2011 4MPs. Since ION's 2012 4MP addressed all issues raised during the 2010 and 2011 peer reviews and incorporated all of NMFS' requested changes, no peer-review of ION's 2012 4MP was conducted.

In 2010, NMFS provided the panel with ION's 4MP and asked the panel to address the following questions and issues for ION's plan:

- (1) The monitoring program should document the effects (including acoustic) on marine mammals and document or estimate the actual level of take as a result of the activity. Does the monitoring plan meet this goal?
- (2) Ensure that the monitoring activities and methods described in the plan will enable the applicant to meet the requirements listed in (1) above;
- (3) Are the applicant's objectives achievable based on the methods described in the plan?
- (4) Are the applicant's objectives the most useful for understanding impacts on marine mammals?
- (5) Should the applicant consider additional monitoring methods or modifications of proposed monitoring methods for the proposed activity? and
- (6) What is the best way for an applicant to report their data and results to NMFS?

In 2011, NMFS revised its guidance to the peer review panel and asked the panel to focus on more specific questions:

- (1) Are the applicant's stated objectives the most useful for understanding impacts on marine mammals and otherwise accomplishing the goals stated in the paragraph above?
- (2) Are the applicant's stated objectives able to be achieved based on the methods described in the plan?

(3) Are there techniques not proposed by the applicant, or modifications to the techniques proposed by the applicant, that should be considered for inclusion in the applicant's monitoring program to better accomplish the goals stated above?

(4) What is the best way for an applicant to present their data and results (formatting, metrics, graphics, etc.) in the required reports that are to be submitted to NMFS?

In 2010, the panel members provided general recommendations that were applicable to all monitoring plans from all seismic activities during that year in section 3 of the report and recommendations that were specific to ION's in-ice seismic survey 4MP in section 4.1.

In 2011, the panel members provided general recommendations that were applicable to all monitoring plans from all seismic activities during that year in section 4 of the report and recommendations that were specific to ION's in-ice seismic survey 4MP in section 5.2.

NMFS reviewed the reports and evaluated all recommendations made by the panel. NMFS determined that there were several measures that ION could incorporate into its 2012 in-ice seismic survey monitoring plan. Additionally, there were other recommendations that NMFS has determined would also result in better data collection, and could potentially be implemented by oil and gas industry applicants, but which likely could not be implemented for the 2012 in-ice season due to technical issues (see below). While it may not be possible to implement those changes this year, NMFS believes that they are worthwhile and appropriate suggestions that may require additional technology advancement for them to be implemented, and ION should consider incorporating them into future monitoring plans should ION decide to apply for IHAs in the future.

The following subsections lay out measures from the panel reports that NMFS recommended for implementation as part of the 2012 in-ice seismic survey by ION and those that are recommended for future programs.

Recommendations for Inclusion in the 2012 4MP and IHA

Section 3.3 of the 2010 panel report contains several recommendations regarding PSOs, which were also included in a general list in the 2011 panel report. NMFS agreed that ION should incorporate these measures:

- Observers should be trained using visual aids (e.g., videos, photos), to help

them identify the species that they are likely to encounter in the conditions under which the animals will likely be seen.

- Observers should understand the importance of classifying marine mammals as “unknown” or “unidentified” if they cannot identify the animals to species with confidence. In those cases, they should note any information that might aid in the identification of the marine mammal sighted. For example, for an unidentified mysticete whale, the observers should record whether the animal had a dorsal fin.

- Observers should attempt to maximize the time spent looking at the water and guarding the exclusion zones. They should avoid the tendency to spend too much time evaluating animal behavior or entering data on forms, both of which detract from their primary purpose of monitoring the exclusion zone.

- ‘Big eye’ binoculars (*e.g.*, 25 x 150 power) should be used from high perches on large, stable platforms. They are most useful for monitoring impact zones that extend beyond the effective line of sight. With two or three observers on watch, the use of big eyes should be paired with searching by naked eye, the latter allowing visual coverage of nearby areas to detect marine mammals. When a single observer is on duty, the observer should follow a regular schedule of shifting between searching by naked-eye, low-power binoculars, and big-eye binoculars based on the activity, the environmental conditions, and the marine mammals of concern.

- Observers should use the best possible positions for observing (*e.g.*, outside and as high on the vessel as possible), taking into account weather and other working conditions.

- Whenever possible, new observers should be paired with experienced observers to avoid situations where lack of experience impairs the quality of observations. If there are Alaska Native MMOs, the MMO training that is conducted prior to the start of the survey activities should be conducted with both Alaska Native MMOs and biologist MMOs being trained at the same time in the same room. There should not be separate training courses for the different MMOs.

In Section 3.4 of the 2010 panel report, panelists recommend collecting some additional data to help verify the utility of the “ramp-up” requirement commonly contained in IHAs. To help evaluate the utility of ramp-up procedures, NMFS recommends that observers be required to record, analyze,

and report their observations during any ramp-up period. NMFS also supports the inclusion of specific studies using multiple types of monitoring (visual, acoustic, tagging) to evaluate how marine mammals respond to increasing received sound levels. Such information should provide useful evidence as to whether ramp-up procedures are an effective form of mitigation.

In the same section of the 2010 report, panelists recommend collecting data to evaluate the efficacy of using FLIR vs. night-vision binoculars. The panelists note that while both of these devices may increase detection capabilities by PSOs of marine mammals, the reliability of these technologies should be tested under appropriate conditions and their efficacy evaluated. NMFS recommends that ION design a study using both FLIR and night-vision binoculars and collect data on levels of detection of marine mammals using each type of device.

Among other things, Section 3.5 of the 2010 panel report recommends recording visibility data because of the concern that the line-of-sight distance for observing marine mammals is reduced under certain conditions. PSOs should “carefully document visibility during observation periods so that total estimates of take can be corrected accordingly”.

Section 4.1 of the 2010 panel report contained recommendations specific to ION’s 2010 2D marine seismic survey monitoring plan, which were also relevant to ION’s 2012 4MP. NMFS worked with ION and decided that some of the measures presented in this section of the report, such as supporting overwintering buoy studies and coordinating in conducting tagging studies using satellite linked telemetry, were not ready for ION’s to implement for its 2010 season operations, but are feasible for its 2012 season as ION has worked to make the necessary preparations over the past two years. In addition, the following recommendations will also be implemented for the 2012 season:

- Conduct sound source verification measurements to verify calculated exclusion zones to account for possible sound channels in deeper water.

- Summarize observation effort and conditions, the number of animals seen by species, the location and time of each sighting, position relative to the survey vessel, the company’s activity at the time, each animal’s response, and any adjustments made to operating procedures. Provide all spatial data on charts (always including vessel location).

- Make all data available in the report or (preferably) electronically for

integration with data from other companies.

- Accommodate specific requests for raw data, including tracks of all vessels and aircraft associated with the operation and activity logs documenting when and what types of sounds are introduced into the environment by the operation.

NMFS spoke with ION about the inclusion of these recommendations into the 2012 4MP and IHA. ION indicated to NMFS that they will incorporate these recommendations into the 4MP, and NMFS will make several of these recommendations requirements in any issued IHA.

Section 4.3 of the 2011 report contains several recommendations regarding PSOs. NMFS agreed that the following measures should be incorporated into the 2012 4MP.

- PSOs record additional details about unidentified marine mammal sightings, such as “blow only”, mysticete with (or without) a dorsal fin, “seal splash”, etc. That information should also be included in 90-day and final reports.

In Section 4.7 of the 2011 panel report, panelists included a section regarding the need for a more robust and comprehensive means of assessing the collective or cumulative impact of many of the varied human activities that contribute noise into the Arctic environment. Specifically, for data analysis and integration, the panelists recommended, and NMFS agrees, that the following recommendations be incorporated into the 2012 program:

- To better assess impacts to marine mammals, data analysis should be separated into periods when a seismic airgun array (or a single mitigation airgun) is operating and when it is not. Final and comprehensive reports to NMFS should summarize and plot:

- Data for periods when a seismic array is active and when it is not; and
- The respective predicted received sound conditions over fairly large areas (tens of km) around operations.

- To help evaluate the effectiveness of PSOs and more effectively estimate take, reports should include sightability curves (detection functions) for distance-based analyses.

- To better understand the potential effects of oil and gas activities on marine mammals and to facilitate integration among companies and other researchers, the following data should be obtained and provided electronically in the final and comprehensive reports:

- The location and time of each aerial or vessel-based sighting or acoustic detection;

- Position of the sighting or acoustic detection relative to ongoing operations (*i.e.*, distance from sightings to seismic operation, drilling ship, support ship, etc.), if known;

- The nature of activities at the time (*e.g.*, seismic on/off);

- Any identifiable marine mammal behavioral response (sighting data should be collected in a manner that will not detract from the PSO's ability to detect marine mammals); and
- Any adjustments made to operating procedures.

In Section 4.9 of the 2011 panel report, the panelists discussed improving take estimates and statistical inference into effects of the activities. NMFS agreed that the following measures should be incorporated into the 2012 4MP:

- Reported results from all hypothesis tests should include estimates of the associated statistical power.

- Estimate and report uncertainty in all take estimates. Uncertainty could be expressed by the presentation of confidence limits, a minimum-maximum, posterior probability distribution, etc.; the exact approach would be selected based on the sampling method and data available.

Section 5.2 of the 2011 report contained recommendations specific to ION's 2011 2D seismic survey monitoring plan. Of the recommendations presented in this section, NMFS determined that the following should be implemented for the 2012 season:

- ION should test thermal imaging technologies during the proposed activities.

- Airguns should be turned off for two shots (*i.e.*, 60 seconds) to provide sufficient time to record the background noise associated with the vessels.

- ION should deploy overwintering acoustic recorders within their survey area during their eastward transit across the Alaskan Beaufort to the Canadian Beaufort Sea early in the summer. The recorders would monitor sounds during the summer, the seismic shoot, and over the winter. ION should contract someone to return in 2012 (2013 in the case that the seismic survey is delayed to 2012) to retrieve the instruments and analyze the data. These acoustic data would provide some true baseline information to compare the occurrence, distribution, and behavior of marine mammals at times when ION's activities are occurring and when they are absent. To accomplish this, ION should present a plan for an acoustic monitoring program to a NMFS-approved expert for review. The plan should consider the best placement of the instruments

relative to ION's proposed activities, the expected distribution and gradients in marine mammal distribution, and other existing overwintering recorders. There are relatively few data on the distribution and relative abundance of marine mammals in the Beaufort Sea during ION's planned seismic survey.

- The report should clearly compare authorized takes to the level of actual estimated takes.

- Sightability curves (detection functions) for PSOs should be provided.

In addition, the panelists included a list of general recommendations from the 2010 Peer-review Panel Report to be implemented by operators in their 2011 open-water season activities. NMFS agreed that the following recommendations should be implemented in ION's 2012 monitoring plan (only those not mentioned previously in this document are noted here):

- Sightings should be entered and archived in a way that enables immediate geospatial depiction to facilitate operational awareness and analysis of risks to marine mammals. Real-time monitoring is especially important in areas of seasonal migration or influx of marine mammals. Various software packages for real-time data entry, mapping, and analysis are available for this purpose.

- Whenever possible, new observers should be paired with experienced observers to avoid situations where lack of experience impairs the quality of observations.

Recommendations for Inclusion in Future Monitoring Plans

Section 3.5 of the 2010 report recommends methods for conducting comprehensive monitoring of a large-scale seismic operation. One method for conducting this monitoring recommended by panel members is the use of passive acoustic devices. Additionally, Section 3.2 of the 2010 report encourages the use of such systems if aerial surveys will not be used for real-time mitigation monitoring. NMFS acknowledges that there are challenges involved in using this technology in conjunction with seismic airguns in this environment, especially in real time. However, NMFS recommends that ION work to help develop and improve this type of technology for use in the Arctic (and use it once it is available and effective), as it could be valuable both for real-time mitigation implementation, as well as for archival data collection.

The panelists also recommend adding a tagging component to monitoring plans. "Tagging of animals expected to

be in the area where the survey is planned also may provide valuable information on the location of potentially affected animals and their behavioral responses to industrial activities. Although the panel recognized that such comprehensive monitoring might be difficult and expensive, such an effort (or set of efforts) reflects the complex nature of the challenge of conducting reliable, comprehensive monitoring for seismic or other relatively-intense industrial operations that ensnare large areas of ocean." While this particular recommendation is not feasible for implementation in 2012, NMFS recommends that ION consider adding a tagging component to future seismic survey monitoring plans should ION decide to conduct such activities in future years.

To the extent possible, NMFS recommends implementing the recommendation contained in Section 4.1.6 of the 2010 report: "Integrate all observer data with information from tagging and acoustic studies to provide a more comprehensive description of the acoustic environment during its survey." However, NMFS recognizes that this integration process may take time to implement. Therefore, ION should begin considering methods for the integration of the observer data now if ION intends to apply for IHAs in the future.

In Section 4.7 of the 2011 report, the panelists stated that advances in integrating data from multiple platforms through the use of standardized data formats are needed to increase the statistical power to assess potential effects. Therefore, the panelists recommended that industry examine this issue and jointly propose one or several data integration methods to NMFS at the Open Water Meeting in 2012 (in this case, at the Open Water Meeting in 2013, since ION cancelled its proposed 2011 operation). NMFS concurs with the recommendation and encourages ION to collaborate with other companies to discuss data integration methods to achieve these efforts and to present the results of those discussions at the 2013 Open Water Meeting.

Other Recommendations in the Report

The panel also made several recommendations in 2010, which were not discussed in the two preceding subsections. NMFS determined that many of the recommendations were made beyond the bounds of what the panel members were tasked to do. For example, the panel recommended that NMFS begin a transition away from

using a single metric of acoustic exposure to estimate the potential effects of anthropogenic sound on marine living resources. This is not a recommendation about monitoring but rather addresses a NMFS policy issue. NMFS is currently in the process of revising its acoustic guidelines on a national scale. Section 3.7 of the 2010 report contains several recommendations regarding comprehensive ecosystem assessments and cumulative impacts. These are good, broad recommendations, however, the implementation of these recommendations would not be the responsibility solely of oil and gas industry applicants. The recommendations require the cooperation and input of several groups, including Federal, state, and local government agencies, members of other industries, and members of the scientific research community. NMFS will encourage the industry and others to build the relationships and infrastructure necessary to pursue these goals, and incorporate these recommendations into future MMPA authorizations, as appropriate. Section 3.8 of the 2010 report makes a recommendation regarding data sharing and reducing the duplication of seismic survey effort. While this is a valid recommendation, it does not relate to monitoring or address any of the six questions which the panel members were tasked to answer.

For some of the recommendations, NMFS determined that additional clarification was required by the panel members before NMFS could determine whether or not applicants should incorporate them into the monitoring plans. NMFS asked for additional clarification on some of the recommendations regarding data collection and take estimate calculations. In addition, NMFS asked the panel members for clarification on the recommendation contained in Section 3.6 of the 2010 report regarding baseline studies.

Reporting Measures

Reporting

(1) SSV Report

A report on the preliminary results of the acoustic verification measurements, including as a minimum the measured 190-, 180-, 160-, and 120-dB re 1 μ Pa (rms) radii of the airgun arrays will be submitted within 120 hr after collection and analysis of those measurements at the start of the field season. This report will specify the distances of the exclusion zones that were adopted for the marine survey activities.

(2) Field Reports

Throughout the survey program, the observers will prepare a report each day or at such other intervals as the IHA may specify (if issued), or ION may require summarizing the recent results of the monitoring program. The field reports will summarize the species and numbers of marine mammals sighted. These reports will be provided to NMFS and to the survey operators.

(3) Technical Reports

The results of the vessel-based monitoring, including estimates of “take by harassment”, will be presented in the 90-day and final technical reports. Reporting will address the requirements established by NMFS in the IHA (if issued). The technical report will include:

(a) Summaries of monitoring effort: total hours, total distances, and distribution of marine mammals through the study period accounting for sea state and other factors affecting visibility and detectability of marine mammals;

(b) Methods, results, and interpretation pertaining to all acoustic characterization work and vessel-based monitoring;

(c) Analyses of the effects of various factors influencing detectability of marine mammals including sea state, number of observers, and fog/glare;

(d) Species composition, occurrence, and distribution of marine mammal sightings including date, water depth, numbers, age/size/gender categories, group sizes, and ice cover; and

(e) Analyses of the effects of survey operations:

- Sighting rates of marine mammals during periods with and without airgun activities (and other variables that could affect detectability);

- Initial sighting distances versus airgun activity state;

- Closest point of approach versus airgun activity state;

- Observed behaviors and types of movements versus airgun activity state;

- Numbers of sightings/individuals seen versus airgun activity state;

- Distribution around the survey vessel versus airgun activity state; and

- Estimates of “take by harassment”.

(4) Notification of Injured or Dead Marine Mammals

In addition to the reporting measures proposed by ION, NMFS will require that ION notify NMFS’ Office of Protected Resources and NMFS’ Stranding Network of sighting an injured or dead marine mammal in the vicinity of marine survey operations.

Depending on the circumstance of the incident, ION shall take one of the following reporting protocols when an injured or dead marine mammal is discovered in the vicinity of the action area.

(a) In the unanticipated event that survey operations clearly cause the take of a marine mammal in a manner prohibited by this Authorization, such as an injury, serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), ION shall immediately cease survey operations and immediately report the incident to the Supervisor of Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) The name and type of vessel involved;

(iii) The vessel’s speed during and leading up to the incident;

(iv) Description of the incident;

(v) Status of all sound source use in the 24 hours preceding the incident;

(vi) Water depth;

(vii) Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(viii) Description of marine mammal observations in the 24 hours preceding the incident;

(ix) Species identification or description of the animal(s) involved;

(x) The fate of the animal(s); and

(xi) Photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with ION to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ION may not resume their activities until notified by NMFS via letter, email, or telephone.

(b) In the event that ION discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), ION will immediately report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with ION to

determine whether modifications in the activities are appropriate.

(c) In the event that ION discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (if issued) (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ION shall report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators, within 24 hours of the discovery. ION shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. ION can continue its operations under such a case.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here (military readiness activities), 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]. For the most part, only take by Level B behavioral harassment is anticipated as a result of the proposed marine seismic survey. However, due to the limited effectiveness of marine mammal monitoring during ice cover and in darkness, NMFS has preliminarily determined that Level A takes of a few individuals of marine mammals could occur if the animals remain undetected within the exclusion zones for a prolonged period of time. Although NMFS believes this is not very likely, NMFS is proposing to authorize limited takes from Level A harassment in order to address the uncertainty regarding the effectiveness of the proposed monitoring measures in these conditions. Anticipated impacts to marine mammals are associated with noise propagation from the seismic airgun(s) and the icebreaking used during the seismic survey.

The full suite of potential impacts to marine mammals was described in detail in the “Potential Effects of the Specified Activity on Marine Mammals” section found earlier in this document. The potential effects of sound from the

proposed marine survey programs might include one or more of the following: tolerance; masking of natural sounds; behavioral disturbance; non-auditory physical effects; and, at least in theory, temporary or permanent hearing impairment (Richardson *et al.* 1995). As discussed earlier in this document, the most common impact will likely be from behavioral disturbance, including avoidance of the ensonified area or changes in speed, direction, and/or diving profile of the animal.

NMFS uses the 160 dB and 120 dB re 1 μ Pa (rms) isopleths to indicate the onset of Level B harassment by seismic airgun impulses and by icebreaking noises, respectively. ION provided calculations for the 160-dB and 120-dB isopleths produced by these active acoustic sources and then used those isopleths to estimate takes by harassment. NMFS used the calculations to make preliminary findings under the MMPA. ION provided a full description of the methodology used to estimate takes by harassment in its IHA application (see **ADDRESSES**), which is also described in the following sections.

ION has requested an authorization to take ten marine mammal species by Level B harassment. These ten marine mammal species are: beluga whale, harbor porpoise, bowhead whale, gray whale, humpback whale, minke whale, bearded seal, ringed seal, spotted seal, and ribbon seal. However, NMFS does not anticipate that humpback whales are likely to be encountered during the season of ION’s icebreaking seismic survey. Therefore, NMFS determined that only nine of the species could be affected and potentially taken by harassment. In addition, although unlikely, NMFS determined that Level A takes of beluga whales, bowhead whales, and ringed seals could also occur, as the proposed monitoring and mitigation measures may not be 100% effective due to ice coverage and long periods of darkness.

Basis for Estimating “Take by Harassment”

As stated previously, it is current NMFS practice to estimate take by Level A harassment for received levels above 180 dB re 1 μ Pa (rms) for cetaceans and 190 dB re 1 μ Pa (rms) for pinnipeds, and take by Level B harassment for all marine mammals under NMFS jurisdiction by impulse sounds at a received level above 160 dB re 1 μ Pa (rms) and by non-impulse sounds at a received level above 120 dB re 1 μ Pa (rms). However, not all animals are equally affected by the same received noise levels and, as described earlier, in

most cases marine mammals are not likely to be taken by Level A harassment (injury) when exposed to received levels higher than 180 dB for a brief period of time.

For behavioral harassment, marine mammals will likely not show strong reactions (and in some cases any reaction) until sounds are much stronger than 160 or 120 dB (for impulse and continuous sounds, respectively). Southall *et al.* (2007) provide a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* (2007)). Tables 7, 9, and 11 in Southall *et al.* (2007) outline the numbers of low-frequency cetaceans, mid-frequency cetaceans, and pinnipeds in water, respectively, reported as having behavioral responses to multi-pulses in 10-dB received level increments. These tables illustrate that the more severe reactions did not occur until sounds were much higher than 160 dB re 1 μ Pa (rms).

Anticipated takes would include “takes by harassment” involving temporary changes in behavior (Level B harassment) and TTS (Level B harassment). NMFS does not consider injury (Level A harassment) to be likely, however, due to the limited effectiveness of monitoring and mitigation measures for animals undetected under the ice and/or during the long periods of darkness, a small amount of Level A harassment takes are also proposed to be authorized. The sections below describe methods used to estimate “take by harassment” and present estimates of the numbers of marine mammals that might be affected during the proposed seismic survey in the U.S. Beaufort Sea. The estimates are based on data obtained during marine mammal surveys in the Beaufort Sea and on estimates of the sizes of the areas where effects could potentially occur. In some cases, these estimates were made from data collected from regions and habitats that differed from the proposed project area. Adjustments to reported population or density estimates were made on a case by case basis to account for differences between the source data and the available information on the distribution and abundance of the species in the project area. This section provides estimates of the number of potential “exposures” to impulsive sound levels ≥ 160 dB re 1 μ Pa (rms), non-pulse sound levels ≥ 120 dB (rms) from icebreaking, and also includes estimates of exposures to ≥ 180 dB (rms) for cetaceans and ≥ 190 dB (rms) for seals.

Although several systematic surveys of marine mammals have been conducted in the southern Beaufort Sea during spring and summer, few data (systematic or otherwise) are available on the distribution and numbers of marine mammals during the early winter period of this survey, particularly in the northern Beaufort Sea. The main sources of distributional and numerical data used in deriving the estimates are described in the next subsection. There is some uncertainty about how representative those data are and the assumptions used below to estimate the potential “take by harassment”. However, the approach used here is accepted by NMFS as the best available at this time. The following estimates are based on a consideration of the number of marine mammals that might be disturbed appreciably by ~7,250 line kilometers (4,505 line miles) of seismic surveys across the Beaufort Sea and, to a lesser extent, the northern Chukchi Sea.

Marine Mammal Density Estimates

This section describes the estimated densities of marine mammals that may occur in the survey area. The area of water that may be ensonified to various levels is described below in the section *Potential Number of “Takes by Harassment.”* Although a marine mammal may be exposed to icebreaking sounds >120 dB (rms) or airgun sounds >160 dB (rms), this does not mean that it will *actually* exhibit a disruption of behavioral patterns in response to the sound source. Rather, the estimates provided here are simply the best estimates of the number of animals that potentially could have a behavioral modification due to the noise. However, not all animals react to sounds at this low level, and many will not show strong reactions (and in some cases any reaction) until sounds are much stronger. There are several variables that determine whether or not an individual animal will exhibit a response to the sound, such as the age of the animal, previous exposure to this type of anthropogenic sound, habituation, etc.

The survey has been designed to minimize interactions with marine mammals by planning to conduct the work at times and in areas where the relative density of marine mammals is expected to be quite low. The survey will begin in offshore waters ($\leq 1,000$ m [3,281 ft] deep) of the eastern U.S. Beaufort Sea (east survey area) in early October. Weather and ice permitting, the waters <1,000 m (3,281 ft) deep will not be surveyed until mid-October and thereafter, in order to avoid migrating bowhead whales. The western U.S.

Beaufort Sea and north-eastern Chukchi Sea (west survey area) is not expected to be surveyed until late October through December.

Separate densities were calculated for habitats specific to cetaceans and pinnipeds. For cetaceans, densities were estimated for areas of water depth <200 m (656 ft), 200–1,000 m (656–3,281 ft), and >1,000 m (3,281 ft), which approximately correspond to the continental shelf, the continental slope, and the abyssal plain, respectively. Separate densities of both cetacean and pinnipeds were also estimated for the east and west survey areas within each water depth category. However, pinniped densities in the west survey area and <200 m (656 ft) water depth category were further sub-divided into <35 m (115 ft) and 35–200 m (115–656 ft) depth categories. This was done because the west survey area is not expected to be surveyed until November–December, and based on historic sea ice data (NOAA National Ice Center, available online at www.natice.noaa.gov), it is expected that substantial amounts of sea ice, including shorefast ice, will be present in the west survey area at that time. Past studies have found that seal densities in ice-covered areas of the Beaufort Sea are different where water depths are <35 m (115 ft) and >35 m (Moulton *et al.*, 2002; Frost *et al.*, 2004); therefore, densities were calculated separately for these water depths. The north-eastern Chukchi Sea is composed of mostly continental shelf waters between 30 m (98 ft) and 200 m (656 ft) in depth, so only a single density estimate for each marine mammal species was used in that area. Since most marine mammals will be continuing their southerly migration in November and early December, the same density estimates for continental shelf waters in the west survey area of the Beaufort Sea were used in the Chukchi Sea. When the seismic survey area is on the edge of the range of a species at this time of year, it is assumed that the average density along the seismic trackline will be 10% (0.10x) the density determined from available survey data within the main range. Density estimates for the Chukchi Sea during the period of November–December were taken from the west survey density estimates at the appropriate depth.

Detectability bias, quantified in part by $f(0)$, is associated with diminishing sightability with increasing lateral distance from the survey trackline. Availability bias, $g(0)$, refers to the fact that there is <100% probability of sighting an animal that is present along the survey trackline. Some sources used

below took account of one or both of these correction factors in reporting densities. When these factors had not been accounted for, the best available correction factors from similar studies and/or species were applied to reported results. Details regarding the application of correction factors are provided below for each species.

(1) Cetaceans

Beluga Whales: Beluga density estimates were calculated based on aerial survey data collected in October in the eastern Alaskan Beaufort Sea by the NMML (as part of the Bowhead Whale Aerial Survey Project (BWASP) program funded by BOEM) in 2007–2010. They reported 31 sightings of 66 individual whales during 1,597 km (992 mi) of on-transect effort over waters 200–2,000 m (656–6,562 ft) deep. An $f(0)$ value of 2.326 was applied and it was calculated using beluga whale sightings data collected in the Canadian Beaufort Sea (Innes *et al.* 2002). A $g(0)$ value of 0.419 was used that represents a combination of $g_a(0) = 0.55$ (Innes *et al.*, 2002) and $g_d(0) = 0.762$ (Harwood *et al.*, 1996). The resulting density estimate (0.1169 individuals/km²; Table 2 in this document) was applied to areas of 200–1,000 m (656–3,281 ft). There were 3 sightings of 4 individual beluga whales during 7,482 km (4,649 mi) of on-transect effort over waters 0–200 m (0–656 ft) deep during this same time period. Using the same $f(0)$ and $g(0)$ values from above, the resulting density estimate for continental shelf waters (0–200 m deep) is 0.0015 individuals/km² (Table 2 in this document). The density estimate for waters >1000 m (3,281 ft) deep was estimated as 40% of the 200–1,000 m (656–3,281 ft) density based on the relative number of sightings in the two water depth categories. For all water depth and survey area categories, the maximum beluga density estimates represent the mean estimates multiplied by four to allow for chance encounters with unexpected large groups of animals or overall higher densities than expected.

Beluga density estimates for the west survey area, which is planned to be surveyed beginning in November, represent the east survey area estimates multiplied by 0.1 because the Beaufort Sea and north-eastern Chukchi Sea is believed to be at the edge of the species’ range in November–December. Belugas typically migrate into the Bering Sea for the winter (Allen and Angliss, 2011) and are not expected to be present in the study area in high numbers in November–December. Satellite tagging data support this and indicate belugas migrate out of the Beaufort Sea in the

October–November period (Suydam *et al.*, 2005).

Bowhead Whales: Bowhead whale density estimates were calculated based on aerial survey data collected in the Beaufort Sea as part of the BWASP program funded by BOEM. The average density estimate was based on surveys in October 2007–2010 and the maximum density estimate was based on surveys conducted in October 1997–2004. The earlier data were used to calculate the maximum estimate because they include some years of unusually high numbers of bowhead sightings in the western Alaskan Beaufort Sea at that time of year. The 2007–2010 data included 25 on-transect sightings collected during 7,482 km (4,649 mi) of effort over waters 0–200 m (0–656 ft) deep in the eastern Alaskan Beaufort Sea. The 1997–2004 data included 147 on-transect sightings of 472 individual whales collected during 20,340 km (12,639 mi) of effort over waters 0–200 m (0–656 ft) deep in the eastern Alaskan Beaufort Sea. An *f*(0) correction factor of 2.33 used in the density calculation was the result of a weighted average of the *f*(0) values applied to each of the flights (Richardson and Thomson, 2002). The multiplication of *ga*(0) = 0.144 and *gd*(0) = 0.505 correction factors reported in Richardson and Thomson (2002) gave the *g*(0) value of 0.0727 used in the density calculation. The resulting density estimates (0.0942 whales/km² and 0.3719 whales/km²) represent the average and maximum densities, respectively for October for areas of <200 m (656 ft) water depth, and are referred to below as the reference density for bowhead whales.

Because bowhead whale density is typically higher in continental shelf waters of the Beaufort Sea in early October, the survey has been planned to start in the eastern U.S. Beaufort Sea in waters deeper than 1,000 m (3,281 ft; ice conditions permitting), where bowhead density is expected to be much lower. Survey activity in shallower waters will proceed from east to west starting later

in October as bowhead whales migrate west out of the Beaufort Sea. The nearshore lines in the east survey area will be surveyed during late October. Bowhead density in the east survey area in waters <200 m (656 ft) deep was estimated by taking ten percent of the reference density above (Table 2 in this document). This adjustment was based on data from Miller *et al.* (2002) that showed a ~90% decrease in bowhead whale abundance in the eastern Alaskan Beaufort Sea from early to late October.

Bowhead whale densities in intermediate (200–1,000 m [656–3,281 ft]) and deep (≥1,000 m [3,281 ft]) water depths in the east survey area are expected to be quite low. Ninety-seven percent of sightings recorded by MMS aerial surveys 1997–2004 occurred in areas of water depth <200 m (656 ft) (Treacy, 1998, 2000, 2002a, 2000b; Monnett and Treacy, 2005). Therefore, density estimates for areas of water depth 200–1,000 m (656–3,281 ft) were estimated to be ~3% of the values for areas with depth <200 m (656 ft). This is further supported by Mate *et al.* (2000), who found that 87% of locations from satellite-tagged bowhead whales occurred in areas of water depth <100 m (328 ft). In areas with water depth >1,000 m (3,281 ft), ~4,225 km (2,625 mi) of aerial survey effort occurred during October 1997–2004; however no bowhead sightings were recorded. The effort occurred over eight years, so it is unlikely that this result would have been influenced by ice cover or another single environmental variable that might have affected whale distribution in a given year. Therefore, a minimal density estimate (0.0001 whales/km²) was used for areas with water depth >1,000 m (3,281 ft).

Several sources were used to estimate bowhead whale density in the west survey area, including the north-eastern Chukchi Sea, which is expected to be surveyed beginning in late October or early November. Mate *et al.* (2000) found that satellite-tagged bowhead whales in the Beaufort Sea travelled at an average rate of 88 km (55 mi) per day.

At that rate, an individual whale could travel across the extent of the east survey area in four days and across the entire east-west extent of the survey area in ten days, if it did not stop to feed during its migration, as bowhead whales have been observed to do earlier in the year (Christie *et al.*, 2010). Also, Miller *et al.* (2002) presented a 10-day moving average of bowhead whale abundance in the eastern Beaufort Sea using data from 1979–2000 that showed a decrease of ~90% from early to late October. Based on these data, it is expected that almost all whales that had been in the east survey area during early October would likely have migrated beyond the survey areas by November–December. In addition, kernel density estimates and animal tracklines generated from satellite-tagged bowhead whales, along with acoustic monitoring data, suggest that few bowhead whales are present in the proposed survey area in November (near Point Barrow), and no whales were present in December (ADFG, 2010; Moore *et al.*, 2010). Therefore, density estimates for the <200 m (656 ft) and 200–1,000 m (656–3,281 ft) water depth categories in the west survey area were estimated to be one tenth of those estimates for the east survey area. Minimal density estimates (0.0001 whales/km²) were used for areas of water depth >1,000 m (3,281 ft).

Other Cetaceans: Other cetacean species are not expected to be present in the area at the time of the planned survey. These species, including humpback and fin whales, typically migrate during autumn and are expected to be south of the proposed survey area by the October–December period. Gray whales have been detected near Point Barrow during the period of the proposed project, and even throughout the winter (Moore *et al.*, 2006; Stafford *et al.*, 2007). Authorization for minimal takes of other cetacean species that are known to occur in the Beaufort Sea during the summer have been requested in case of a chance encounter of a few remaining individuals.

TABLE 2—EXPECTED DENSITIES OF CETACEANS IN THE ARCTIC OCEAN IN OCTOBER–DECEMBER BY WATER DEPTH AND SURVEY AREA

Species	<200 m	200–1,000 m	>1,000 m
<i>Beaufort East Survey Area:</i>			
Beluga whale	0.0015	0.1169	0.0468
Harbor porpoise	0.0001	0.0001	0.0001
Bowhead whale	0.0094	0.0028	0.0001
Gray whale	0.0001	0.0001	0.0001
Minke whale	0.0001	0.0001	0.0001
<i>Beaufort West Survey Area:</i>			
Beluga whale	0.0002	0.0117	0.0047
Harbor porpoise	0.0001	0.0001	0.0001
Bowhead whale	0.0009	0.0003	0.0001

TABLE 2—EXPECTED DENSITIES OF CETACEANS IN THE ARCTIC OCEAN IN OCTOBER–DECEMBER BY WATER DEPTH AND SURVEY AREA—Continued

Species	<200 m	200–1,000 m	>1,000 m
Gray whale	0.0001	0.0001	0.0001
Minke whale	0.0001	0.0001	0.0001
<i>Chukchi Survey Area:</i>			
Beluga whale	0.0002	.....	.....
Harbor porpoise	0.0001	.....	.....
Bowhead whale	0.0009	.....	.....
Gray whale	0.0001	.....	.....
Minke whale	0.0001	.....	.....

(2) Pinnipeds

In polar regions, most pinnipeds are associated with sea ice, and typical census methods involve counting pinnipeds when they are hauled out on ice. In the Beaufort Sea, surveys typically occur in spring when ringed seals emerge from their lairs (Frost *et al.*, 2004). Depending on the species and study, a correction factor for the proportion of animals hauled out at any one time may or may not have been applied (depending on whether an appropriate correction factor was available for the particular species and area). By applying a correction factor, the total density of the pinniped species in an area can be estimated. Only the animals in water would be exposed to the pulsed sounds from the airguns; however, densities that are presented generally represent either only the animals on the ice or all animals in the area. Therefore, only a fraction of the pinnipeds present in areas where ice is present (and of sufficient thickness to support hauled-out animals) would be exposed to seismic sounds during the proposed seismic survey. Individuals hauled out on ice in close proximity to the vessels are likely to enter the water as a reaction to the passing vessels, and the proportion that remain on the ice will likely increase with distance from the vessels.

Ringed Seals: Ringed seal density for the east survey area for waters <1,000 m (3,281 ft) deep was estimated using vessel-based data collected in the Beaufort Sea during autumn (Sep–Oct) 2006–2008 and reported by Savarese *et al.* (2010; Table 3 in this document). Correction factors for sightability and availability were used when the authors calculated the estimates, so no further adjustments were required. For the east survey area for waters >1,000 m (3,281 ft) deep, few data on seal distribution are available. Harwood *et al.* (2005) recorded a ringed seal sighting in the Beaufort Sea in an area where water depth was >1,000 m (3,281 ft) in September–October 2002 during an oceanographic cruise. It is therefore

possible that ringed seals would occur in those areas, and their presence would likely be associated with ephemeral prey resources. If a relatively warm surface eddy formed that concentrated prey in offshore areas at depths that would be possible for ringed seals to access, it is possible that seals would be attracted to it. A warm eddy was found in the northern Beaufort Sea in October 2002 in an area where water depth was >1,000 m (3,281 ft) (Crawford, 2010), so it is possible that such an oceanographic feature might develop again and attract seals offshore. However, it is unclear whether such a feature would attract many seals, especially since the marine mammal observers present on the ship in 2002 did not observe very many seals associated with the offshore eddy. In the absence of standardized survey data from deep-water areas, but with available data suggesting densities are likely to be quite low, minimal density estimates (0.0001 seals/km²) were used in areas where water depth is >1,000 m (3,281 ft). For all water depth categories in the east survey area, the maximum ringed seal density was assumed to be the mean estimate multiplied by four to allow for chance encounters with unexpected large groups of animals or overall higher densities than expected.

Habitat zones and associated densities were defined differently in the west survey area, which will be surveyed in November–December, because more ice is expected to be encountered at that time than in October (NOAA National Ice Center: www.natice.noaa.gov). The density estimates for the west survey area were calculated using aerial survey data collected by Frost *et al.* (2004) in the Alaskan Beaufort Sea during the spring. A g(0) correction factor of 0.60 from tagging data reported by Bengtson *et al.* (2005) was used to adjust all density estimates from Frost *et al.* (2004) described below. Seal distribution and density in spring, prior to breakup, are thought to reflect distribution patterns established earlier in the year (*i.e.*, during the winter months; Frost *et al.*, 2004). Density

estimates were highest (1.00–1.33 seals/km²) in areas of water depth 3–35 m (10–115 ft), and decreased (0–0.77 seals/km²) in water >35 m (115 ft) deep. The mean density estimate used for areas with water depth <35 m (Table 4 in this document) was estimated using an average of the pack ice estimates modeled by Frost *et al.* (2004). The maximum estimate for the same area is the maximum observed density for areas of water depth 3–35 m (10–115 ft) in Frost *et al.* (2004). The mean density estimate used for areas with 35–200 m (115–656 ft) water depth is the modeled value for water depth >35 m (115 ft) from Frost *et al.* (2004). The maximum estimate is the maximum observed density for areas with >35 m (115 ft) water depth in Frost *et al.* (2004). Because ringed seal density tends to decrease with increasing water depth (Moulton *et al.*, 2002; Frost *et al.*, 2004), ringed seal density was estimated to be minimal in areas of >200 m (656 ft) water depth.

In the Chukchi Sea, ringed seal densities were taken from offshore aerial surveys of the pack ice zone conducted in spring 1999 and 2000 (Bengtson *et al.*, 2005). The average density from those two years (weighted by survey effort) was 0.4892 seals/km². This value served as the average density while the highest density from the two years (0.8100 seals/km² in 1999) was used as the maximum density.

Other Seal Species: Other seal species are expected to be less frequent in the study area during the period of this survey. Bearded and spotted seals would be present in the area during summer, and possibly ribbon seals as well, but they generally migrate into the southern Chukchi and Bering seas during fall (Allen and Angliss, 2011). Few satellite-tagging studies have been conducted on these species in the Beaufort Sea, winter surveys have not been conducted, and a few bearded seals have been reported over the continental shelf in spring prior to general breakup. However, three bearded seals tracked in 2009 moved

south into the Bering Sea along the continental shelf by November (Cameron and Boveng, 2009). It is possible that some individuals, bearded seals in particular, may be present in the survey area. In the absence of better

information from the published literature or other sources that would indicate significant numbers of any of these species might be present, minimal density estimates were used for all areas and water depth categories for these

species, with the estimates for bearded seals assumed to be slightly higher than those for spotted and ribbon seals (Tables 3 and 4 in this document).

TABLE 3—EXPECTED DENSITIES (#/KM²) OF PINNIPEDS IN THE EAST SURVEY AREA OF THE U.S. BEAUFORT SEA IN OCTOBER

Species	<200 m	200–1,000 m	>1,000 m
Ringed seal	0.0840	0.0840	0.0004
Bearded seal	0.0004	0.0004	0.0004
Spotted seal	0.0001	0.0001	0.0001
Ribbon seal	0.0001	0.0001	0.0001

TABLE 4—EXPECTED DENSITIES (#/KM²) OF PINNIPEDS IN THE BEAUFORT WEST AND CHUKCHI SURVEY AREAS OF THE ARCTIC OCEAN IN NOVEMBER–DECEMBER

Species	<35 m	35–200 m	>200 m
<i>Beaufort West:</i>			
Ringed seal	1.9375	1.0000	0.0004
Bearded seal	0.0004	0.0004	0.0004
Spotted seal	0.0001	0.0001	0.0001
Ribbon seal	0.0001	0.0001	0.0001
<i>Chukchi Sea:</i>			
Ringed seal		0.4892	
Bearded seal		0.0004	
Spotted seal		0.0001	
Ribbon seal		0.0001	

Potential Number of Takes by Level B Behavioral Harassment

Numbers of marine mammals that might be present and potentially taken are estimated below based on available data about mammal distribution and densities at different locations and times of the year as described above.

The number of individuals of each species potentially exposed to received levels ≥ 120 dB re 1 μ Pa (rms) or ≥ 160 dB re 1 μ Pa (rms), depending on the type of activity occurring, within each portion of the survey area (east and west) and water depth category was estimated by multiplying:

- The anticipated area to be ensonified to ≥ 120 dB re 1 μ Pa (rms) or ≥ 160 dB re 1 μ Pa (rms) in each portion of the survey area (east and west) and water depth category, by
- the expected species density in that time and location.

Some of the animals estimated to be exposed, particularly migrating bowhead whales, might show avoidance reactions before being exposed to ≥ 160 dB re 1 μ Pa (rms). Thus, these calculations actually estimate the number of individuals potentially exposed to ≥ 160 dB (rms) that would occur if there were no avoidance of the area ensonified to that level.

(1) Potential Number of Takes by Seismic Airguns at Received Levels ≥ 160 dB

The area of water potentially exposed to received levels of airgun sounds ≥ 160 dB (rms) was calculated by using a GIS to buffer the planned survey tracklines within each water depth category by the associated modeled ≥ 160 dB (rms) distances. The expected sound propagation from the airgun array was modeled by JASCO Applied Research (Zykov *et al.*, 2010) and is expected to vary with water depth. Survey tracklines falling within the <100 m (328 ft), 100–1,000 m (328–3,281 ft), and >1,000 m (3,281 ft) water depth categories were buffered by distances of 27.8 km (17.3 mi), 42.2 km (26.2 mi), and 31.6 km (19.6 mi), respectively. The total area of water that would be exposed to sound >160 dB (rms) on one or more occasions is estimated to be 209,752 km². A breakdown by water depth classes used in association with density estimates is presented in Table 5 in this document and Figure 2 of the IHA application.

Based on the operational plans and marine mammal densities described above, the estimates of marine mammals potentially exposed to sounds ≥ 160 dB (rms) are presented in Table 5 in this document. For species likely to be present, the requested numbers are

calculated as described above. For less common species, estimates were set to minimal numbers to allow for chance encounters. Discussion of the number of potential exposures is summarized by species in the following subsections.

It is likely that some members of one endangered cetacean species (bowhead whale) will be exposed to received sound levels ≥ 160 dB (rms) unless bowheads avoid the survey vessel before the received levels reach 160 dB (rms). However, the late autumn timing and the design of the proposed survey will minimize the number of bowheads and other cetaceans that may be exposed to seismic sounds generated by this survey. The best estimates of the number of whales potentially exposed to ≥ 160 dB (rms) are 282 and 4,315 for bowheads and belugas, respectively (Table 5).

The ringed seal is the most widespread and abundant pinniped species in ice-covered arctic waters, and there is a great deal of variation in estimates of population size and distribution of these marine mammals. Ringed seals account for the vast majority of marine mammals expected to be encountered, and hence exposed to airgun sounds with received levels >160 dB (rms) during the proposed marine survey. It was estimated that ~60,293 ringed seals may be exposed to

marine survey sounds with received levels ≥ 160 dB (rms) if they do not avoid the sound source. Other pinniped species are not expected to be present in the proposed survey area in more than minimal numbers in October–December; however, ION is requesting authorization for a small number of harassment “takes” of species that occur

in the area during the summer months in case a few individuals are encountered (Table 5 in this document).

It should be noted that there is no evidence that most seals exposed to airgun pulses with received levels 160 dB re 1 μ Pa (rms) are disturbed appreciably, and even at a received level of 180 dB (rms) disturbance is not

conspicuous (Harris *et al.*, 2001; Moulton and Lawson, 2002). Therefore, for seals, the estimates of numbers exposed to ≥ 160 dB re 1 μ Pa (rms) greatly exceed the numbers of seals that will actually be disturbed in any major or (presumably) biologically significant manner.

TABLE 5—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO ≥ 160 dB RE 1 μ PA (RMS) DURING ION’S PROPOSED SEISMIC PROGRAM IN THE BEAUFORT AND CHUKCHI SEAS, OCTOBER–DECEMBER 2012

	Water depth			Total
	<200 m	200–1,000 m	>1,000 m	
Cetaceans				
Beluga whale	43	1,195	3,077	4,215
Harbor porpoise	9	2	10	21
Bowhead whale	269	3	10	282
Gray whale	9	2	10	21
Minke whale	9	2	10	21
Pinnipeds (Beaufort East)				
	<35 m	35–200 m	>200 m	
Ringed seal	1,794	805	25	2,624
Bearded seal	9	4	25	38
Spotted seal	2	1	6	9
Ribbon seal	2	1	6	9
Pinnipeds (Beaufort West & Chukchi Sea)				
Ringed seal	16,969	40,682	18	57,669
Bearded seal	4	25	18	47
Spotted seal	1	6	5	12
Ribbon seal	1	6	5	12

(2) Potential Number of Takes by Icebreaking at Received Levels ≥ 120 dB

As discussed above, based on available information regarding sounds produced by icebreaking in various ice regimes and the expected ice conditions during the proposed survey, vessel sounds generated during ice breaking are likely to have source levels between 175 and 185 dB re 1 μ Pa-m. As described above, we have assumed that seismic survey activity will occur along all of the planned tracklines shown in Figure 1 of ION’s IHA application. Therefore, received levels ≥ 160 dB radius of 26.7–42.2 km (16.6–26.2 mi; depending on water depth) to each side of all of the survey lines was applied for the calculation. Assuming a source level of 185 dB re 1 μ Pa-m and using the 15logR for calculating spreading loss of

acoustic intensity, icebreaking sounds may be ≥ 120 dB out to a maximum distance of ~21.6 km (13.4 mi). Thus, all sounds produced by icebreaking are expected to diminish below 120 dB re 1 μ Pa within the zone where we assume mammals will be exposed to ≥ 160 dB (rms) from seismic sounds. Exposures of marine mammals to icebreaking sounds with received levels ≥ 120 dB would effectively duplicate or “double-count” animals already included in the estimates of exposure to strong (≥ 160 dB) airgun sounds. The planned survey lines cover a large extent of the U.S. Beaufort Sea, and seismic survey activity along all those lines has been assumed in the estimation of takes. Any non-seismic periods, when only icebreaking might occur, would therefore result in fewer exposures than estimated from seismic activities.

If refueling of the *Geo Arctic* is required during the survey and the *Polar Prince* transits to and from Canadian waters to acquire additional fuel for itself, an additional ~200 km (124 mi) of transit may occur. Most of this transit would likely occur through ice in offshore waters >200 m (656 ft) in depth. For estimation purposes we have assumed 25% of the transit will occur in 200–1,000 m (656–3,281 ft) of water and the remaining 75% will occur in >1,000 m (3,281 ft) of water. This results in an estimated ~2,160 km² of water in areas 200–1,000 m (656–3,281 ft) deep and 6,487 km² in waters >1,000 m (3,281 ft) deep being ensounded to ≥ 120 dB by icebreaking sounds. Using the density estimates for the east survey area shown in Tables 2 and 3, the estimated exposures of cetaceans and pinnipeds are shown in Table 6 here.

TABLE 6—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO ≥ 120 dB RE 1 μ Pa (RMS) DURING ICEBREAKING ACTIVITIES ASSOCIATED WITH THE PREFERRED ALTERNATIVE FOR REFUELING DURING ION'S PROPOSED SEISMIC PROGRAM IN THE BEAUFORT SEA, OCTOBER–DECEMBER 2012

Species	Water depth		Total
	200–1,000 m	>1,000 m	
Beluga whale	253	320	573
Harbor porpoise	0	1	1
Bowhead whale	1	1	2
Gray whale	0	1	1
Minke whale	0	1	1
Ringed seal	181	3	184
Bearded seal	1	3	4
Spotted seal	0	1	1
Ribbon seal	0	1	1

If the *Polar Prince* cannot return to port via Canadian waters, then a transit of ~600 km (373 mi) from east to west across the U.S. Beaufort would be necessary. Again, it is expected that most of this transit would likely occur in offshore waters >200 m (656 ft) in depth. For estimation purposes we have

assumed 25% of the transit will occur in 200–1,000 m (656–3,281 ft) of water and the remaining 75% will occur in >1,000 m (3,281 ft) of water. This results in an estimated ~3,240 km² of water in areas 200–1,000 m (656–3,281 ft) deep and 9,720 km² in waters >1,000 m (3,281 ft) deep being ensounded to ≥ 120

dB by icebreaking sounds within each half of the U.S. Beaufort Sea, for a total of 25,920 km² ensounded across the entire U.S. Beaufort Sea. Using the density estimates in Tables 2–3, estimated exposures of cetaceans and pinnipeds are shown in Table 7 here.

TABLE 7—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO ≥ 120 dB RE 1 μ Pa (RMS) DURING ICEBREAKING ACTIVITIES ASSOCIATED WITH THE SECONDARY ALTERNATIVE FOR REFUELING DURING ION'S PROPOSED SEISMIC PROGRAM IN THE BEAUFORT AND CHUKCHI SEAS, OCTOBER–DECEMBER 2012

Species	Water depth		Total
	200–1,000 m	>1,000 m	
Beluga whale	417	500	917
Harbor porpoise	0	2	2
Bowhead whale	1	2	3
Gray whale	0	2	2
Minke whale	0	2	2
Ringed seal	273	8	281
Bearded seal	2	8	10
Spotted seal	0	2	2
Ribbon seal	0	2	2

Potential Number of Takes by Level B TTS and Level A Harassment

As noted previously, due to the limited effectiveness of monitoring and mitigation measures for animals under ice cover and during long lowlight hours, NMFS is proposing to authorize takes of marine mammals by TTS (Level B harassment) and PTS (Level A harassment or injury) when exposed to received noise levels above 180 and 190 dB re 1 μ Pa (rms) for prolonged period, although this is unlikely to occur. Therefore, the result of the analysis is conservative in which animals are estimated to be affected by receiving TTS or even PTS.

The methods used below for estimating the number of individuals potentially exposed to sounds >180 or >190 dB re 1 μ Pa (rms) should therefore include an additional reduction to estimate the number that may incur

PTS, which is presumably a Level A take. For reasons described here and further below, NMFS and ION do not anticipate that marine mammals will be injured or harmed by the proposed project.

Only two cetacean species, beluga and bowhead, are likely to be present in the Alaskan Beaufort Sea late in the survey period or where extensive ice cover is present. Gray whale vocalizations have been recorded throughout one winter (2003–2004) in the western Alaskan Beaufort Sea near Pt. Barrow (Moore *et al.*, 2006). However, the presence of gray whales in October and November in the Alaskan Beaufort Sea does not appear to be a regular occurrence or involve a significant number of animals when it does occur. NMFS therefore does not anticipate exposures of cetacean species, other than belugas or bowheads, to received sound levels

≥ 180 dB during periods of darkness or in areas with extensive ice cover to occur.

Beluga whales have shown avoidance of icebreaking sounds at relatively low received levels. In the Canadian Arctic, belugas showed initial avoidance of icebreaking sounds at received levels from 94–105 dB in the 20–1,000 Hz band, although some animals returned to the same location within 1–2 days and tolerated noise levels as high as 120 dB in that band (Finley *et al.*, 1990). Playback experiments of icebreaker sounds resulted in 35% of beluga groups showing avoidance at received levels between 78–84 dB in the $\frac{1}{3}$ -octave band centered at 5,000 Hz, or 8–14 dB above ambient levels (Richardson *et al.*, 1995b). Based on these results, it was estimated that reactions by belugas to an actual icebreaker would likely occur at ~10 km (6.2 mi) under similar

conditions. Erbe and Farmer (2000) estimated that zones of disturbance from icebreaking sounds could extend 19–46 km (12–28.6 mi) depending on various factors. Erbe and Farmer (2000) also estimated that a beluga whale would have to remain within 2 km (1.2 mi) of an icebreaker backing and ramming for over 20 min to incur small TTS (4.8 dB), and within 120 m for over 30 min to incur more significant TTS (12–18 dB).

Aerial and vessel based monitoring of seismic surveys in the central Beaufort Sea showed significant avoidance of active airguns by belugas. Results of the aerial monitoring suggested an area of avoidance out to 10–20 km (6.2–12.4 mi) around an active seismic source with higher than expected sighting rates observed at distances 20–30 km (12.4–18.6 mi) from the source. The nearest aerial “transect” beluga sighting during seismic activity was at a distance of 7.8 km (4.8 mi). Only seven beluga sightings were recorded from the survey vessel during the entire study, three of which occurred during airgun activity. Two of the seismic period sightings were made at the beginning of active airgun periods and the other was during seismic testing of a limited number of guns. These sightings occurred at distances between 1.54 km and 2.51 km from the vessel. Similarly, few beluga whales were observed near seismic surveys in the Alaskan Beaufort Sea in 1996–1998 (Richardson 1999), although the beluga migration corridor is typically well offshore of where most of the seismic survey occurred. Observers on seismic and associated support vessels operating in the Alaskan Beaufort Sea during 2006–2008 seasons reported no beluga sightings during seismic or non-seismic periods, suggesting avoidance of both seismic and vessel sounds (Savarese *et al.*, 2010). No mitigation measures during seismic operations (power down or shut down of airgun arrays) have been required as a result of beluga sightings during surveys in the Chukchi or Beaufort seas in 2006–2009 (Ireland *et al.*, 2007a, 2007b; Patterson *et al.*, 2007; Funk *et al.*, 2008; Ireland *et al.*, 2009b; Reiser *et al.*, 2010).

Based on the reported avoidance of vessel, icebreaking, and seismic sounds by beluga whales, and the low and seasonally decreasing density during the time of the proposed survey, the likelihood of beluga whales occurring within the ≥ 180 dB zone during the proposed project is extremely low. A cautionary estimate that assumes 10% of belugas will show no avoidance of the 180 dB zone results in an estimate of 23 beluga whales exposed to sounds ≥ 180 dB (based on the densities described above and the area of water

that may be ensonified to ≥ 180 dB) during the proposed project.

Bowhead whales have shown similar avoidance of vessel and seismic sounds. Less information is available regarding avoidance of icebreaking sounds; however, avoidance of the overall activity was noted during intensive icebreaking around drill sites in the Alaskan Beaufort Sea in 1992. Migrating bowhead whales appeared to avoid the area of drilling and icebreaking by ~ 25 km (15.5 mi) (Brewer *et al.*, 1993). Also, monitoring of drilling activities in a previous year, during which much less icebreaking occurred, showed avoidance by migrating bowheads out to ~ 20 km (12.4 mi). Therefore, the relative influence of icebreaking versus drilling sounds is difficult to determine.

Similarly, migrating bowheads strongly avoided the area within ~ 20 km (12.4 mi) of nearshore seismic surveys, and less complete avoidance extended to ~ 30 km (18.6 mi) (Miller *et al.*, 1999). Only 1 bowhead was observed from the survey vessel during the three seasons (1996–1998) when seismic surveys continued into September. Bowheads not actively engaged in migration have shown less avoidance of seismic operations. During seismic surveys in the Canadian Beaufort Sea in late August and early September bowhead whales appeared to avoid an area within ~ 2 km (1.2 mi) of airgun activity (Miller and Davis, 2002) and sightings from the survey vessel itself were common (Miller *et al.*, 2005). Vessel-based sightings showed a statistically significant difference of ~ 600 m (1,969 ft) in the mean sighting distances of bowheads (relative to the survey vessel) between periods with and without airgun activity. This, along with significantly lower sighting rates of bowhead whales during periods of airgun activity, suggests that bowheads still avoided close approach to the area of seismic operation (Miller and Davis, 2002). Results from vessel-based and aerial monitoring in the Alaskan Beaufort Sea during 2006–2008 were similar to those described above (Funk *et al.*, 2010). Sighting rates from seismic vessels were significantly lower during airgun activity than during non-seismic periods. Support vessels reported 12 sightings of bowhead whales in areas where received levels from seismic were ≥ 160 dB (Savarese *et al.*, 2010). Aerial surveys reported bowhead whales feeding in areas where received levels of seismic sounds were up to 160 dB. Bowheads were not observed in locations with higher received levels (Christie *et al.*, 2010). Based on four direct approach experiments in northern Alaskan waters, Ljungblad *et al.* (1988)

reported total avoidance of seismic sounds at received sound levels of 152, 165, 178, and 165 dB.

The available information summarized above suggests that bowhead whales are very likely to avoid areas where received levels are ≥ 180 dB re 1 μ Pa (rms). Again, making a cautionary assumption that as many as 10% of bowheads may not avoid the 180 dB zone around the airguns, we calculate that 6 individuals could be exposed to ≥ 180 dB (based on the densities described above and the area of water that may be ensonified to ≥ 180 dB). During seismic surveys in the Alaskan Beaufort Sea in 2007 and 2008, 5 power downs of the full airgun array were made due to sightings of bowhead or unidentified mysticete whales (8 total individuals) within the ≥ 180 dB exclusion zone. These sightings occurred during >8000 km (4,971 mi) of survey effort in good conditions plus additional effort in poor conditions (Savarese *et al.*, 2010), resulting in an estimated 0.625 sightings within the 180 dB distance per 1,000 km (620 mi) of seismic activity. Even without allowance for the reduced densities likely to be encountered in October and especially November, or for the fact that observers will be on duty during all daylight hours and will call for mitigation actions if whales are sighted within or near the 180 dB distance, this rate would suggest that fewer than 8 bowheads may occur within the ≥ 180 dB zone during the proposed survey.

For seals (principally ringed seals), the proportion exhibiting avoidance is lower than for cetaceans, and thus the received level at which avoidance becomes evident is higher. However, some survey results have shown a statistically significant avoidance of the 190 dB re 1 μ Pa (rms) zone, and an assumption that numbers exposed to ≥ 190 dB could be calculated from “non-seismic” density data is not inappropriate. Using similar reasoning as described above for cetaceans, we have limited these estimates to ringed seals as the presence of other pinniped species is very unlikely during the times and locations when exposures to ≥ 190 dB may have an increased likelihood of occurrence.

Monitoring work in the Alaskan Beaufort Sea during 1996–2001 provided considerable information regarding the behavior of seals exposed to seismic pulses (Harris *et al.*, 2001; Moulton and Lawson, 2002). The combined results suggest that some seals avoid the immediate area around seismic vessels. In most survey years, ringed seal sightings averaged somewhat farther away from the seismic vessel

when the airguns were operating than when they were not (Moulton and Lawson, 2002). Also, seal sighting rates at the water surface were lower during airgun array operations than during no-airgun periods in each survey year except 1997. However, the avoidance movements were relatively small, on the order of 100 m (328 ft) to (at most) a few hundreds of meters, and many seals remained within 100–200 m (328–656 ft) of the trackline as the operating airgun array passed by.

During more recent seismic surveys in the Arctic (2006–2009), Reiser *et al.* (2009) also reported a tendency for localized avoidance of areas immediately around the seismic source vessel along with coincident increased sighting rates at support vessels operating 1–2 km (0.62–1.2 mi) away. However, pinnipeds were sighted within the 190 dB zone around the operating airguns more frequently than were cetaceans within the 180 dB zone. Assuming that 25% of the ringed seals encountered may not avoid the 190 dB zone as the airguns approach, we calculate that ~277 individuals could be exposed to ≥ 190 dB (based on the densities described above and the area of water that may be ensonified to ≥ 190 dB). As an alternative estimate, during the same >8,000 km (4,971 mi) of monitoring effort in the Alaskan Beaufort Sea reported above regarding bowhead whales, 42 observations of seals within the 190 dB zone caused power downs of the airguns. This was ~5.25 power downs per 1,000 km (620 mi) of seismic survey effort. Even without allowance for the reduced densities of seals likely to be encountered in October–November or for the fact that observers will be on duty during all daylight hours and will call for mitigation actions if necessary, this rate would suggest that as many as 38 seals may occur within the ≥ 190 dB zone during the proposed survey.

However, as stated earlier, in most circumstances marine mammals would avoid areas where intense noise could cause injury, including PTS. Although approximately 23 beluga whales, 8 bowhead whales, and 38 seals (presumably all ringed seals) could theoretically be exposed to received levels above 180 dB re 1 μ Pa (for whales) and 190 dB re 1 μ Pa (for seals), most of them are likely to avoid these areas of intense noise and would not incur TTS or PTS (injury). In the unlikely case a small number of individuals animals did not avoid the intense noise, then TTS or even PTS could occur. Assuming that 10% of the individuals that were initially exposed to received levels above 180 dB re 1 μ Pa

(for beluga and bowhead whales) and 190 dB re 1 μ Pa (for ringed seals) do not vacate the area, and subsequent exposure leads to some degree of PTS, then approximately 3 beluga whales, 1 bowhead whale, and 4 ringed seals could be taken by Level A harassment. However, NMFS considers this estimate to be very conservative as explained above.

Estimated Take Conclusions

Cetaceans—Effects on cetaceans are generally expected to be restricted to avoidance of an area around the seismic survey and short-term changes in behavior, falling within the MMPA definition of “Level B harassment,” and possibly mild TTS or PTS (which would be considered “Level A harassment”), though not very likely.

Using the 160 dB (for pulse) and 120 dB (for non-pulse) criteria, the average estimates of the numbers of individual cetaceans exposed to sounds ≥ 160 dB and 120 dB re 1 μ Pa (rms) represent varying proportions of the populations of each species in the Beaufort Sea and adjacent waters. For species listed as “Endangered” under the ESA, the estimates include approximately 284 bowheads. This number is approximately 1.86% of the Bering-Chukchi-Beaufort population of >15,233 assuming 3.4% annual population growth from the 2001 estimate of >10,545 animals (Zeh and Punt 2005). For other cetaceans that might occur in the vicinity of the marine seismic survey in the Chukchi Sea, they also represent a very small proportion of their respective populations. The average estimates of the number of beluga whales, harbor porpoises, gray whales, and minke whales that might be exposed to ≥ 160 dB and 120 dB re 1 μ Pa (rms) are 5,232, 23, 23, and 23, when the secondary alternative for refueling is being considered. These numbers represent 13.33%, 0.05%, 0.12%, and 1.87% of these species’ respective populations in the proposed action area. If ION selects the preferred alternative for refueling, the estimated takes for beluga would be reduced to 4,888 animals, or 12.45% of the population.

Seals—A few seal species are likely to be encountered in the study area, but ringed seal is by far the most abundant in this area. The average estimates of the numbers of individuals exposed to sounds at received levels ≥ 160 dB and 120 dB re 1 μ Pa (rms) during the proposed icebreaking seismic survey are as follows: ringed seals (60,574), bearded seals (95), spotted seals (23), and ribbon seals (23), when the secondary alternative for refueling is being considered. These numbers

represent 24.33%, 0.04%, 0.04%, and 0.05% of Alaska stocks of ringed, bearded, spotted, and ribbon seals. If ION selects the preferred alternative for refueling, the estimated takes for ringed, bearded, spotted, and ribbon seals would drop to 60,477, 89, 22, and 22, respectively, which in turn represent 24.29%, 0.04%, 0.04%, 0.04% of Alaska stocks of these species.

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 variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

Most of the takes from ION’s proposed icebreaking seismic surveys are expected to be Level B behavioral harassment. It is possible, however, that TTS (Level B harassment) and even PTS (Level A harassment) could occur if monitoring measures are not effective due to extensive ice coverage and prolonged periods of darkness. Although it is possible that some individual marine mammals may be exposed to sounds from marine survey activities more than once, this is not expected to happen extensively since both the animals and the survey vessels will be moving constantly in and out of the survey areas. Therefore, the degrees of TTS and PTS, if incurred, are expected to be minor (low intensity—a few dBs of loss at certain frequencies), and the TTS is expected to be brief (minutes to hours) before full recovery. No serious injuries or mortalities are anticipated to occur as a result of the proposed seismic survey, and none are proposed to be authorized.

Of the nine marine mammal species likely to occur in the proposed marine survey area, only the bowhead whale is listed as endangered under the ESA. These species are also designated as “depleted” under the MMPA. Despite these designations, the Bering-Chukchi-Beaufort stock of bowheads has been increasing at a rate of 3.4 percent annually for nearly a decade (Allen and Angliss, 2010). Additionally, during the 2001 census, 121 calves were counted, which was the highest yet recorded. The

calf count provides corroborating evidence for a healthy and increasing population (Allen and Angliss, 2010). There is no critical habitat designated in the U.S. Arctic for the bowhead whale. Certain stocks or populations of gray and beluga whales and spotted seals are listed as endangered or are proposed for listing under the ESA; however, none of those stocks or populations occur in the proposed activity area. On December 10, 2010, NMFS published a notice of proposed threatened status for subspecies of the ringed seal (75 FR 77476) and a notice of proposed threatened and not warranted status for subspecies and distinct population segments of the bearded seal (75 FR 77496) in the **Federal Register**. Neither of these two ice seal species is currently considered depleted under the MMPA.

Level B Behavioral Harassment

Most of the bowhead whales encountered during the summer will likely show overt disturbance (avoidance) only if they receive airgun sounds with levels ≥ 160 dB re 1 μ Pa (rms). Odontocete reactions to seismic energy pulses are usually assumed to be limited to shorter distances from the airgun(s) than are those of mysticetes, probably in part because odontocete low-frequency hearing is assumed to be less sensitive than that of mysticetes. However, at least when in the Canadian Beaufort Sea in summer, belugas appear to be fairly responsive to seismic energy, with few being sighted within 6–12 mi (10–20 km) of seismic vessels during aerial surveys (Miller *et al.*, 2005). Both belugas and bowhead whales are expected to occur in much smaller numbers in the vicinity of the proposed seismic survey area during the proposed survey. In addition, due to the constant moving of the seismic survey vessel, the duration of the noise exposure of cetaceans to seismic impulses would be brief. For the same reason, it is unlikely that any individual animal would be exposed to high received levels multiple times.

Taking into account the mitigation measures that are planned, effects on cetaceans are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of “Level B harassment,” with only limited potential occurrences of TTS (Level B harassment) and PTS (Level A harassment).

Furthermore, the estimated numbers of animals potentially exposed to sound levels sufficient to cause appreciable disturbance are small percentages of the

population sizes in the Bering-Chukchi-Beaufort seas, as described above.

Finally, as discussed above, since ION is not likely to start its proposed in-ice seismic survey until early October when most of the cetaceans (especially bowhead whales) have moved out of the area, the actual take numbers are expected to be much lower.

The many reported cases of apparent tolerance by cetaceans of seismic exploration, vessel traffic, and some other human activities show that co-existence is possible. Mitigation measures such as controlled vessel speed, dedicated PSOs, non-pursuit, and shutdowns or power downs when marine mammals are seen within defined ranges will further reduce short-term reactions and minimize any effects on hearing sensitivity. In all cases, the effects are expected to be short-term, with no lasting biological consequence.

Some individual pinnipeds may be exposed to sound from the proposed marine surveys more than once during the time frame of the project. However, as discussed previously, due to the constant moving of the survey vessel, the probability of an individual pinniped being exposed multiple times is much lower than if the source is stationary. Therefore, NMFS has preliminarily determined that the exposure of pinnipeds to sounds produced by the proposed marine seismic survey in the Beaufort and Chukchi Seas is mostly expected to result in no more than Level B harassment and is anticipated to have no more than a negligible impact on the animals.

The estimated Level B behavioral takes proposed to be authorized represent up to 12.45% of the Beaufort Sea population of approximately 39,258 beluga whales (Allen and Angliss, 2010), up to 0.04% of Bering Sea stock of approximately 48,215 harbor porpoises, 0.12% of the Eastern North Pacific stock of approximately 19,126 gray whales, 1.86% of the Bering-Chukchi-Beaufort population of 15,233 individuals assuming 3.4 percent annual population growth from the 2001 estimate of 10,545 animals (Zeh and Punt, 2005), and 1.78% of the Alaska stock of approximately 1,233 minke whales. The take estimates presented for ringed, bearded, spotted, and ribbon seals represent up to 24.29, 0.04, 0.04, and 0.04 percent of U.S. Arctic stocks of each species, respectively. These estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment if each animal is taken only once. It may seem that a large number of ringed seal (up to 24.29%) would be taken as a

result of the proposed seismic survey activity. It is important to note that the population densities for marine mammals within the proposed survey area are overestimated for the season of the seismic survey due to the lack of realistic data, and that the number of ringed seals that would occur in the project area during the proposed survey period is expected to be much lower. Therefore, far fewer ringed seals are actually expected to be taken as a result of ION's proposed icebreaking seismic survey in the Beaufort Sea. Furthermore, it is likely that individual animals could be taken multiple times and be counted as different individuals, thus inflating the percentage of unique individuals that would be affected. Finally, as discussed earlier, the effects to marine mammals that would result from Level B behavioral harassment are expected to be minor and brief, and mostly involve animals temporarily changing their behavior and vacating the proximity of the survey area briefly as the survey vessel and icebreaker approach. Marine mammals are expected to resume their normal activities and reoccupy the area as soon as the vessels move away. Additionally, since the proposed icebreaking seismic survey is planned outside the time when ice seals are giving birth, no impacts on pups are expected. Therefore, although the number of ringed seals that could be affected by the proposed seismic survey seems high, these effects are not expected to be biologically significant on either the individual or population level for this species. In addition, the mitigation and monitoring measures (described previously in this document) proposed for inclusion in the IHA (if issued) are expected to further reduce any potential disturbance to marine mammals.

Hearing Impairment (TTS, Level B Harassment, or PTS, Level A Harassment)

Most cetaceans (and particularly Arctic cetaceans) show relatively high levels of avoidance when received sound pulse levels exceed 160 dB re 1 μ Pa (rms), and it is uncommon to sight Arctic cetaceans within the 180 dB radius, especially for prolonged duration. Results from monitoring programs associated with seismic activities in the Arctic have shown significant responses by cetaceans at levels much lower than 180 dB. These results have been used by agencies to support monitoring requirements within distances where received levels fall below 160 dB and even 120 dB. Thus, very few animals would be exposed to sound levels of 180 dB re 1 μ Pa (rms)

regardless of detectability by PSOs. Avoidance varies among individuals and depends on their activities or reasons for being in the area, and occasionally a few individual arctic cetaceans will tolerate sound levels above 160 dB. Tolerance of levels above 180 dB is infrequent, regardless of the circumstances. Therefore, a calculation of the number of cetaceans potentially exposed to >180 dB that is based simply on density would be a gross overestimate of the actual numbers exposed to 180 dB. Such calculations would be misleading unless avoidance response behaviors were taken into account to estimate what fraction of those originally present within the soon-to-be ensounded to >180 dB zone (as estimated from density) would still be there by the time levels reach 180 dB.

It is estimated that up to 1 bowhead whale and 3 beluga whales could be exposed to received noise levels above 180 dB re 1 μ Pa (rms), and 4 ringed seals could be exposed to received noise levels above 190 dB re 1 μ Pa (rms) for durations long enough to cause TTS if the animals are not detected in time to have mitigation measures implemented (or even PTS if such exposures occurred repeatedly). The potential takes of marine mammals by TTS (Level B harassment), or, potentially PTS (Level A harassment) if exposed for a long enough time or repeatedly represent 0.0068%, 0.0076%, and 0.0016% of bowhead whale, beluga whale, and ringed seal populations, respectively. None of the other species are expected to be exposed to received sound levels anticipated to cause TTS or PTS.

Marine mammals that are taken by TTS are expected to receive minor (in the order of several dBs) and brief (minutes to hours) temporary hearing impairment because (1) animals are not likely to remain for prolonged periods within high intensity sound fields, and (2) both the seismic vessel and the animals are constantly moving, and it is unlikely that the animal will be moving along with the vessel during the survey. Although repeated experience to TTS could result in PTS (injury or Level A harassment), for the same reasons discussed above, even if marine mammals experience PTS, the degree of PTS is expected to be mild, resulting in a few dB elevation of hearing threshold. Therefore, even if a few marine mammals receive TTS or PTS, the degree of these effects are expected to be minor and, in the case of TTS, brief, and are not expected to be biologically significant for the population or species.

Effects on Marine Mammal Habitat

Potential impacts to marine mammal habitat were discussed previously in this document (see the "Anticipated Effects on Habitat" section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect rates of recruitment or survival of marine mammals in the area. Based on the vast size of the Arctic Ocean where feeding by marine mammals occurs versus the localized area of the marine survey activities, any missed feeding opportunities in the direct project area would be minor based on the fact that other feeding areas exist elsewhere. For bowhead whales, the majority of the population would have migrated past many of the feeding areas of the central Beaufort Sea prior to the initiation of activities by ION.

The effects of icebreaking activity are not expected to result in significant modification to marine habitat. Although it is expected that the ice coverage would be 8/10th to 10/10th, the ice in the proposed project area is loose annual ice during the time of the proposed in-ice seismic survey activity. Therefore, ice floes being broken and pushed aside from the icebreaker are expected to rejoin behind the seismic survey path. In addition, no ice seal lairs are expected during the period of ION's proposed in-ice seismic survey in the Beaufort and Chukchi Seas.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that ION's proposed 2010 in-ice seismic survey in the Beaufort and Chukchi Seas may result in the incidental take of small numbers of marine mammals, by Level A and Level B harassment only, and that the total taking from the seismic surveys will have a negligible impact on the affected species or stocks.

Unmitigable Adverse Impact Analysis and Preliminary Determination

NMFS has preliminarily determined that ION's proposed 2010 in-ice marine seismic survey in the Beaufort and Chukchi Seas will not have an unmitigable adverse impact on the availability of species or stocks for taking for subsistence uses. This preliminary determination is supported by information contained in this document and ION's POC. ION has adopted a spatial and temporal strategy for its Beaufort and Chukchi Seas in-ice

seismic survey operations that is intended to avoid subsistence activities. ION plans to start its seismic survey after the fall bowhead harvests have concluded for the communities of Kaktovik and Nuiqsut, and its seismic survey is expected to occur far offshore from regular ringed seal hunts. Although hunting may still be occurring in Barrow, ION has agreed to work in the eastern part of the survey area first so as not to overlap with hunting areas used by hunters in Barrow. The late November bowhead harvests on St. Lawrence Island should not be affected by ION's vessel transits through the Bering Strait at the conclusion of the survey in early to mid-December. No other subsistence activity is expected to occur during ION's proposed seismic survey period.

Based on the measures described in ION's POC, the proposed mitigation and monitoring measures (described earlier in this document), and the project design itself, NMFS has determined preliminarily that there will not be an unmitigable adverse impact on subsistence uses from ION's icebreaking marine seismic survey in the Beaufort and Chukchi Seas.

Proposed Incidental Harassment Authorization

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Authorization is valid from October 1, 2012, through December 15, 2012.

2. This Authorization is valid only for activities associated with in-ice seismic surveys and related activities in the Beaufort and Chukchi Seas, as indicated in Figure 1 of ION's IHA application.

3. (a) The species authorized for incidental harassment takings, Level B harassment only, are:

- Beluga whales (*Delphinapterus leucas*);
- Harbor porpoises (*Phocoena phocoena*);
- Bowhead whales (*Balaena mysticetus*);
- Gray whales (*Eschrichtius robustus*);
- Minke whales (*Balaenoptera acutorostrata*);
- Bearded seals (*Erignathus barbatus*);
- Spotted seals (*Phoca largha*);
- Ringed seals (*P. hispida*); and
- Ribbon seals (*P. fasciata*).

(b) The species authorized for incidental harassment taking, Level A harassment, are:

- One individual of bowhead whale;
 - Three individuals of beluga whale;
- and

• Four individuals of ringed seal.

(c) The authorization for taking by harassment is limited to the following acoustic sources and from the following activities:

(i) 28 Sercel G-gun airguns, of which 26 are active with a total discharge volume of 4,450 in³.

(ii) Individual airgun sizes range from 70 to 380 in³.

(d) The taking of any marine mammal in a manner prohibited under this Authorization must be reported within 24 hours of the taking to the Alaska Regional Administrator (907-586-7221) or his designee in Anchorage (907-271-3023), National Marine Fisheries Service (NMFS) and the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427-8401, or his designee (301-427-8418).

4. The holder of this Authorization must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, at least 48 hours prior to the start of collecting seismic data (unless constrained by the date of issuance of this Authorization in which case notification shall be made as soon as possible).

5. Prohibitions

(a) The taking, by incidental harassment only, is limited to the species listed under conditions 3(a) and (b) above. The taking by serious injury or death of these species or the taking by harassment, injury or death of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

(b) The taking of any marine mammal is prohibited whenever the required

source vessel protected species observers (PSOs), required by condition 7(a)(i), are not onboard in conformance with condition 7(a)(i) of this Authorization.

6. Mitigation

(a) Exclusion Zones

(i) Establish and monitor with trained Protected Species Observers (PSOs) a preliminary exclusion zone for cetaceans and pinnipeds surrounding the airgun array on the source vessel where the received level would be 180 dB (for cetaceans) and 190 dB (for pinnipeds) re 1 μ Pa (rms), respectively. For purposes of the sound source verification test, described in condition 7(d)(i), the modeled exclusion zones at areas of different depth are shown in Table 1 below.

TABLE 1—MARINE MAMMAL EXCLUSION ZONES FOR SPECIFIC CATEGORIES BASED ON THE WATER DEPTH

rms (dB re. 1 μ Pa)	Exclusion and disturbance zones (meters)		
	Less than 100 m	100 m–1,000 m	More than 1,000 m
190	600	180	180
180	2,850	660	580
160	27,800	42,200	31,600

(ii) Immediately upon completion of data analysis of the sound source verification measurements required under condition 7(d)(i) below, the new 180-dB and 190-dB re 1 μ Pa (rms) marine mammal exclusion zones shall be established based on the sound source verification.

(b) Speed or Course Alteration

(i) If a marine mammal (in water) is detected outside the exclusion zone and, based on its position and the relative motion, is likely to enter the exclusion zone, the vessel's speed and/or direct course shall be changed in a manner that also minimizes the effect on the planned objectives when such a maneuver is safe.

(ii) Avoid concentrations or groups of whales by all vessels in transient under the direction of ION. Operators of vessels should, at all times, conduct their activities at the maximum distance possible from such concentrations of whales.

(iii) All vessels during transient shall be operated at speeds necessary to ensure no physical contact with whales occurs. If any barge or transit vessel approaches within 1.6 km (1 mi) of observed bowhead whales, the vessel operator shall take reasonable precautions to avoid potential

interaction with the bowhead whales by taking one or more of the following actions, as appropriate:

(A) Reducing vessel speed to less than 5 knots within 300 yards (900 feet or 274 m) of the whale(s);

(B) Steering around the whale(s) if possible;

(C) Operating the vessel(s) in such a way as to avoid separating members of a group of whales from other members of the group;

(D) Operating the vessel(s) to avoid causing a whale to make multiple changes in direction; and

(E) Checking the waters immediately adjacent to the vessel(s) to ensure that no whales will be injured when the propellers are engaged.

(iv) When weather conditions require, such as when visibility drops, adjust vessel speed accordingly to avoid the likelihood of injury to whales.

(v) In the event that any aircraft (such as helicopters) are used to support the planned survey, the mitigation measures below would apply:

(A) Under no circumstances, other than an emergency, shall aircraft be operated at an altitude lower than 1,000 feet above sea level (ASL) when within 0.3 mile (0.5 km) of groups of whales.

(B) Helicopters shall not hover or circle above or within 0.3 mile (0.5 km) of groups of whales.

(c) Ramp-up:

(i) A ramp up, following a cold start, can be applied if the exclusion zone has been free of marine mammals for a consecutive 30-minute period. The entire exclusion zone must have been visible during these 30 minutes. If the entire exclusion zone is not visible, then ramp up from a cold start cannot begin.

(ii) Ramp up procedures from a cold start shall be delayed if a marine mammal is sighted within the exclusion zone during the 30-minute period prior to the ramp up. The delay shall last until the marine mammal(s) has been observed to leave the exclusion zone or until the animal(s) is not sighted for at least 15 or 30 minutes. The 15 minutes applies to small toothed whales and pinnipeds, while a 30 minute observation period applies to baleen whales and large toothed whales.

(iii) A ramp up, following a shutdown, can be applied if the marine mammal(s) for which the shutdown occurred has been observed to leave the exclusion zone or until the animal(s) is not sighted for at least 15 minutes (small toothed whales and pinnipeds) or 30 minutes (baleen whales and large toothed whales).

(iv) If, for any reason, electrical power to the airgun array has been discontinued for a period of 10 minutes or more, ramp-up procedures shall be implemented. Only if the PSO watch has been suspended, a 30-minute clearance of the exclusion zone is required prior to commencing ramp-up. Discontinuation of airgun activity for less than 10 minutes does not require a ramp-up.

(v) The seismic operator and PSOs shall maintain records of the times when ramp-ups start and when the airgun arrays reach full power.

(d) Power-down/Shutdown:

(i) The airgun array shall be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable exclusion zone of the full array, but is outside the applicable exclusion zone of the single mitigation airgun.

(ii) If a marine mammal is already within the exclusion zone when first detected, the airguns shall be powered down immediately.

(iii) Following a power-down, ramp up to the full airgun array shall not resume until the marine mammal has cleared the exclusion zone. The animal will be considered to have cleared the exclusion zone if it is visually observed to have left the exclusion zone of the full array, or has not been seen within the zone for 15 minutes (pinnipeds or small toothed whales) or 30 minutes (baleen whales or large toothed whales).

(iv) If a marine mammal is sighted within or about to enter the 190 or 180 dB (rms) applicable exclusion zone of the single mitigation airgun, the airgun array shall be shutdown.

(v) If a marine mammal on ice is detected by PSOs within the exclusion zones it will be watched carefully in case it enters the water. In the event the animal does enter the water and is within an applicable exclusion zone of the airguns during seismic operations, a power down or other necessary mitigation measures shall immediately be implemented.

(vi) Airgun activity shall not resume until the marine mammal has cleared the exclusion zone of the full array. The animal will be considered to have cleared the exclusion zone as described above under ramp up procedures.

(e) Poor Visibility Conditions:

(i) If during foggy conditions, heavy snow or rain, or darkness, the full 180 dB exclusion zone is not visible, the airguns cannot commence a ramp-up procedure from a full shut-down.

(ii) If one or more airguns have been operational before nightfall or before the onset of poor visibility conditions, they can remain operational throughout the

night or poor visibility conditions. In this case ramp-up procedures can be initiated, even though the exclusion zone may not be visible, on the assumption that marine mammals will be alerted by the sounds from the single airgun and have moved away.

(iii) Airguns shall not be fired during long transits when exploration activities are not occurring, including the common firing of one airgun (also referred to as the "mitigation gun" in past IHAs). This does not apply to turns when starting a new track line.

(f) Mitigation Measures for Subsistence Activities:

(i) ION shall fully implement the following measures, consistent with the 2012 Plan of Cooperation (COP), in order to avoid having an unmitigable adverse impact on the availability of marine mammal species or stocks for taking for subsistence uses:

(A) Schedule the seismic survey so that seismic operations in the eastern survey area do not begin until October 1, 2012, or the completion of Kaktovik bowhead whaling, whichever is later;

(B) Schedule the seismic survey so that seismic operations in the western survey area do not begin until completion of Barrow fall bowhead whaling (expected to be approximately November 1, 2012).

(C) Plan the survey to proceed from the eastern to western U.S. Beaufort Sea to avoid, as much as possible, any remaining migratory animals and associated subsistence activities.

(ii) ION shall maintain a Communication Center (Com Center) that is staffed 24 hours a day, 7 days a week, during the seismic survey operational window.

(iii) Vessels shall report in to the Com Center a minimum of every 6 hours and provide information about the vessel's location, speed, and direction. The Com Center shall be notified if there is any significant change in plans or any potentially unsafe or unanticipated conditions (e.g., weather, ice conditions).

7. Monitoring:

(a) Daytime Vessel Monitoring:

(i) Protected Species Observers (PSOs): The holder of this Authorization must designate biologically-trained, on-site individuals (PSOs) to be onboard the source vessel and icebreaker, who are approved in advance by NMFS, to conduct the visual monitoring programs required under this Authorization and to record the effects of seismic surveys and the resulting noise on marine mammals.

(A) PSO teams shall consist of Inupiat observers and experienced field biologists. An experienced field crew

leader will supervise the PSO team onboard the survey vessel. New observers shall be paired with experienced observers to avoid situations where lack of experience impairs the quality of observations.

(B) Crew leaders and most other biologists serving as observers in 2012 will be individuals with experience as observers during recent seismic or shallow hazards monitoring projects in Alaska, the Canadian Beaufort, or other offshore areas in recent years.

(C) PSOs shall complete a two or three-day training session on marine mammal monitoring, to be conducted shortly before the anticipated start of the 2012 open-water season. The training session(s) will be conducted by qualified marine mammalogists with extensive crew-leader experience during previous vessel-based monitoring programs. A marine mammal observers' handbook, adapted for the specifics of the planned survey program will be reviewed as part of the training.

(D) If there are Alaska Native PSOs, the PSO training that is conducted prior to the start of the survey activities shall be conducted with both Alaska Native PSOs and biologist PSOs being trained at the same time in the same room. There shall not be separate training courses for the different PSOs.

(E) Crew members should not be used as primary PSOs because they have other duties and generally do not have the same level of expertise, experience, or training as PSOs, but they could be stationed on the fantail of the vessel to observe the near field, especially the area around the airgun array and implement a rampdown or shutdown if a marine mammal enters the exclusion zone (or exclusion zone).

(F) If crew members are to be used as PSOs, they shall go through some basic training consistent with the functions they will be asked to perform. The best approach would be for crew members and PSOs to go through the same training together.

(G) PSOs shall be trained using visual aids (e.g., videos, photos), to help them identify the species that they are likely to encounter in the conditions under which the animals will likely be seen.

(H) ION shall train its PSOs to follow a scanning schedule that consistently distributes scanning effort according to the purpose and need for observations. For example, the schedule might call for 60% of scanning effort to be directed toward the near field and 40% at the far field. All PSOs should follow the same schedule to ensure consistency in their scanning efforts.

(i) PSOs shall be trained in documenting the behaviors of marine

mammals. PSOs should simply record the primary behavioral state (*i.e.*, traveling, socializing, feeding, resting, approaching or moving away from vessels) and relative location of the observed marine mammals.

(ii) PSOs shall be on duty for four (4) consecutive hours or less, although more than one four-hour shift per day is acceptable, with a maximum of 12 hours of watch time per PSO.

(iii) Three PSOs shall be stationed aboard the icebreaker *Polar Prince* to take advantage of this forward operating platform and provide advanced notice of marine mammals to the PSOs on the survey vessel. Three PSOs shall be stationed aboard the survey vessel *Geo Arctic* to monitor the exclusion zones centered on the airguns and to request mitigation actions when necessary.

(iv) At all times, the crew must be instructed to keep watch for marine mammals. If any are sighted, the bridge watch-stander must immediately notify the PSO(s) on-watch. If a marine mammal is within or closely approaching its designated exclusion zone, the seismic acoustic sources must be immediately powered down or shutdown (in accordance with condition 6(d) above).

(v) Observations by the PSOs on marine mammal presence and activity shall begin a minimum of 30 minutes prior to the estimated time that the seismic source is to be turned on and/or ramped-up.

(vi) PSO(s) shall watch for marine mammals from the best available vantage point on the survey vessels, typically the bridge. The observer(s) shall scan systematically with the unaided eye and 7 × 50 reticle binoculars, supplemented during good visibility conditions with 20 × 60 image-stabilized Zeiss Binoculars or Fujinon 25 × 150 “Big-eye” binoculars, a thermal imaging (FLIR) camera, and night-vision equipment when needed.

(vii) When marine mammal is sighted, information to be recorded by PSOs shall include the following information:

(A) species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if determinable), bearing and distance from observer, apparent reaction to activities (*e.g.*, none, avoidance, approach, etc.), closest point of approach, and pace;

(B) additional details for any unidentified marine mammal or unknown observed;

(C) time, location, speed, and activity of the vessel, sea state, ice cover, visibility, and sun glare; and

(D) the positions of other vessel(s) in the vicinity of the observer location.

(viii) The ship's position, speed of the vessel, water depth, sea state, ice cover, visibility, airgun status (ramp up, mitigation gun, or full array), and sun glare shall be recorded at the start and end of each observation watch, every 30 minutes during a watch, and whenever there is a change in any of those variables.

(ix) ION shall work with its observers to develop a means for recording data that does not reduce observation time significantly.

(x) PSOs shall attempt to maximize the time spent looking at the water and guarding the exclusion radii. They shall avoid the tendency to spend too much time evaluating animal behavior or entering data on forms, both of which detract from their primary purpose of monitoring the exclusion zone.

(xi) PSOs shall understand the importance of classifying marine mammals as “unknown” or “unidentified” if they cannot identify the animals to species with confidence. In those cases, they shall note any information that might aid in the identification of the marine mammal sighted. For example, for an unidentified mysticete whale, the observers should record whether the animal had a dorsal fin.

(xii) Additional details about unidentified marine mammal sightings, such as “blow only”, mysticete with (or without) a dorsal fin, “seal splash”, etc., shall be recorded.

(b) At Night and Poor Visibility Visual Monitoring

(i) Night-vision equipment (Generation 3 binocular image intensifiers, or equivalent units) shall be available for use at night and poor visibility if visual monitoring is conducted.

(ii) A forward looking thermal imaging (FLIR) camera system mounted on a high point near the bow of the icebreaker shall also be available to assist with detecting the presence of seals and polar bears on ice and in the water ahead of the airgun array.

(iii) FLIR and NVD Monitoring Protocols

- All PSOs shall monitor for marine mammals according to the procedures outlined in the Marine Mammal Observer handbook.

- One PSO will be responsible for monitoring the FLIR system (IR-PSO) during most darkness and twilight periods. The on-duty IR-PSO shall monitor the IR display and alternate between the two search methods described below. If a second PSO is on watch, they shall scan the same area as the FLIR using the NVDs for

comparison. The two PSOs shall coordinate what area is currently being scanned.

- The IR-PSO should rotate between the search methods (see below) every 30 minutes in the following routine:

- 00:00–00:30: Method I
- 00:30–01:00: Method II, Port side
- 01:00–01:30: Method I
- 01:30–02:00: Method II, Starboard side

(iv) FLIR and NVD Search Methods

(A) Method I: Set the horizontal tilt of the camera to an angle that provides an adequate view out in front of the vessel and also provides good resolution to potential targets. Pan back and forth across the forward 180° of the vessels heading at a slow-scanning rate of approximately 1–2°/sec, as one would with binoculars.

(B) Method II: Set the horizontal tilt of the camera to an angle that provides an adequate view out in front of the vessel, and then set the camera at a fixed position that creates a swath of view off the bow and to one side of the vessel.

(c) Field Data-Recording, Verification, Handling, and Security

(i) PSOs shall record their observations onto datasheets or directly into handheld computers. During periods between watches and periods when operations are suspended, those data shall be entered into a laptop computer running a custom computer database.

(ii) The accuracy of the data entry shall be verified in the field by computerized validity checks as the data are entered, and by subsequent manual checking of the database printouts.

(iii) Quality control of the data shall be facilitated by

(A) The start-of-season training session,

(B) Subsequent supervision by the onboard field crew leader, and

(C) Ongoing data checks during the field season.

(iv) Data shall be backed up regularly onto CDs and/or USB disks, and stored at separate locations on the vessel.

(v) Observation effort data shall be designed to capture the amount of PSO effort itself, environmental conditions that impact an observer's ability to detect marine mammals, and the equipment and method of monitoring being employed. These data shall be collected every 30 minutes or when an effort variable changes (*e.g.*, change in the equipment or method being used to monitor, on/off-signing PSO, etc.), and shall be linked to sightings data.

(vi) Effort and sightings data forms shall also include fields to capture information specific to monitoring in darkness and to more accurately describe the observation conditions. These fields include the following:

(A) Observation Method: FLIR, NVD, spotlight, eye (naked eye or regular binoculars), or multiple methods. This data is collected every 30 minutes with the Observer Effort form and with every sighting.

(B) Cloud Cover: Percentage. This can impact lighting conditions and reflectivity.

(C) Precipitation Type: Fog, rain, snow, or none.

(D) Precipitation Reduced Visibility: Confirms whether or not visibility is reduced due to precipitation. This will be compared to the visibility distance (# km) to determine when visibility is reduced due to lighting conditions versus precipitation.

(E) Daylight Amount: Daylight, twilight, dark. The addition of the twilight field has been included to record observation periods where the sun has set and observation distances may be reduced due to lack of light.

(F) Light Intensity: Recorded in footcandles (fc) using an incident light meter. This procedure was added to quantify the available light during twilight and darkness periods and may allow for light-intensity bins to be used during analysis.

(d) Acoustic Monitoring

(i) Sound Source Verification

(A) ION shall use measurements of the same airgun source taken in the Canadian Beaufort Sea in 2010, along with sound velocity measurements taken in the Alaskan Beaufort Sea at the start of the 2012 survey to update the propagation model and estimate new exclusion zones.

(B) Sound source verification shall consist of distances where broadside and endfire directions at which broadband received levels reach 190, 180, 170, 160, and 120 dB re 1 μ Pa (rms) for the airgun array(s). The configurations of airgun arrays shall include at least the full array and the operation of a single source that will be used during power downs.

(C) The test results shall be reported to NMFS within 5 days of completing the test.

(ii) Seismic Hydrophone Streamer Recordings of Vessel Sounds: ION shall use the hydrophones in the seismic streamer to monitor the icebreaker noise.

(A) Once every hour the airguns would not be fired at 2 consecutive

intervals and instead a period of background sounds would be recorded, including the sounds generated by the vessels.

(B) In order to estimate sound energy over a larger range of frequencies, results from previous measurements of icebreakers could be generalized and added to the data collected during this project.

(iii) Over-Winter Acoustic Recorders

(A) ION shall collaborate with other industry operators to deploy acoustics recorders in the Alaskan Beaufort Sea in fall of 2012, to be retrieved during the 2013 open-water season.

(B) Acoustic data from the over-winter recorders shall be analyzed to address the following objectives:

- Characterize the sounds and propagation distances produced by Ion's source vessel, icebreaker, and airguns on and to the edge of the U.S. Beaufort Sea shelf,

- Characterize ambient sounds and marine mammal calls during October and November to assess the relative effect of ION's seismic survey on the background conditions, and to characterize marine mammal calling behavior, and

- Characterize ambient sound and enumerate marine mammal calls through acoustic sampling of the environment from December 2012 through July 2013, when little or no anthropogenic sounds are expected.

8. Reporting:

(a) Sound Source Verification Report: A report on the preliminary results of the acoustic verification measurements, including as a minimum the measured 190-, 180-, 160-, and 120-dB re 1 μ Pa (rms) radii of the airgun arrays will be submitted within 120 hr after collection and analysis of those measurements at the start of the field season. This report shall specify the distances of the exclusion zones that were adopted for the marine survey activities.

(b) Field Reports: Throughout the survey program, the observers shall prepare a report each day or at such other interval as the IHA (if issued), or ION may require summarizing the recent results of the monitoring program. The field reports shall summarize the species and numbers of marine mammals sighted. These reports shall be provided to NMFS and to the survey operators.

Technical Reports

(c) Technical Report: The Results of the vessel-based monitoring, including estimates of "take by harassment", shall be presented in the 90-day and final technical reports. Reporting will address

the requirements established by NMFS in the IHA (if issued). The technical report will include:

(i) Summaries of monitoring effort: Total hours, total distances, and distribution of marine mammals through the study period accounting for sea state and other factors affecting visibility and detectability of marine mammals;

(ii) Methods, results, and interpretation pertaining to all acoustic characterization work and vessel-based monitoring;

(iii) Analyses of the effects of various factors influencing detectability of marine mammals including sea state, number of observers, and fog/glare;

(iv) Species composition, occurrence, and distribution of marine mammal sightings including date, water depth, numbers, age/size/gender categories, group sizes, and ice cover; and

(v) Analyses of the effects of survey operations:

- Sighting rates of marine mammals during periods with and without airgun activities (and other variables that could affect detectability);

- Initial sighting distances versus airgun activity state;

- Closest point of approach versus airgun activity state;

- Observed behaviors and types of movements versus airgun activity state;

- Numbers of sightings/individuals seen versus airgun activity state;

- Distribution around the survey vessel versus airgun activity state; and

- Estimates of "take by harassment".

(vi) To better assess impacts to marine mammals, data analysis should be separated into periods when a seismic airgun array (or a single airgun) is operating and when it is not. Final and comprehensive reports to NMFS should summarize and plot: (A) Data for periods when a seismic array is active and when it is not; and (B) The respective predicted received sound conditions over fairly large areas (tens of km) around operations.

(vii) Sighting rates of marine mammals during periods with and without airgun activities (and other variables that could affect detectability), such as: (A) Initial sighting distances versus airgun activity state; (B) closest point of approach versus airgun activity state; (C) observed behaviors and types of movements versus airgun activity state; (D) numbers of sightings/individuals seen versus airgun activity state; (E) distribution around the survey vessel versus airgun activity state; and (F) estimates of take by harassment.

(viii) Reported results from all hypothesis tests should include

estimates of the associated statistical power when practicable.

(ix) Estimate and report uncertainty in all take estimates. Uncertainty could be expressed by the presentation of confidence limits, a minimum-maximum, posterior probability distribution, etc.; the exact approach would be selected based on the sampling method and data available.

(x) The report should clearly compare authorized takes to the level of actual estimated takes.

(xi) The draft report will be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. The draft report will be considered the final report for this activity under this Authorization if NMFS has not provided comments and recommendations within 90 days of receipt of the draft report.

9. Notification of Injured or Dead Marine Mammals

(a) In the unanticipated event that survey operations clearly cause the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), ION shall immediately cease survey operations and immediately report the incident to the Supervisor of Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and/or by email to Jolie.Harrison@noaa.gov and Shane.Guan@noaa.gov and the Alaska Regional Stranding Coordinators (Aleria.Jensen@noaa.gov and Barbara.Mahoney@noaa.gov). The report must include the following information:

- (i) Time, date, and location (latitude/longitude) of the incident;
 - (ii) The name and type of vessel involved;
 - (iii) The vessel's speed during and leading up to the incident;
 - (iv) Description of the incident;
 - (v) Status of all sound source use in the 24 hours preceding the incident;
 - (vi) Water depth;
 - (vii) Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
 - (viii) Description of marine mammal observations in the 24 hours preceding the incident;
 - (ix) Species identification or description of the animal(s) involved;
 - (x) The fate of the animal(s); and
 - (xi) Photographs or video footage of the animal (if equipment is available).
- Activities shall not resume until NMFS is able to review the

circumstances of the prohibited take. NMFS shall work with ION to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ION may not resume their activities until notified by NMFS via letter, email, or telephone.

(b) In the event that ION discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), ION will immediately report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401, and/or by email to Jolie.Harrison@noaa.gov and Shane.Guan@noaa.gov and the NMFS Alaska Stranding Hotline (1-877-925-7773) and/or by email to the Alaska Regional Stranding Coordinators (Aleria.Jensen@noaa.gov and Barbara.Mahoney@noaa.gov). The report must include the same information identified in Condition 10(a) above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with ION to determine whether modifications in the activities are appropriate.

(c) In the event that ION discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in Condition 3 of this Authorization (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ION shall report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401, and/or by email to Jolie.Harrison@noaa.gov and Shane.Guan@noaa.gov and the NMFS Alaska Stranding Hotline (1-877-925-7773) and/or by email to the Alaska Regional Stranding Coordinators (Aleria.Jensen@noaa.gov and Barbara.Mahoney@noaa.gov), within 24 hours of the discovery. ION shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. ION can continue its operations under such a case.

10. Activities related to the monitoring described in this Authorization do not require a separate scientific research permit issued under section 104 of the Marine Mammal Protection Act.

11. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals, or if there is an unmitigable adverse impact on the availability of such species or stocks for subsistence uses.

12. A copy of this Authorization and the Incidental Take Statement must be in the possession of each seismic vessel operator taking marine mammals under the authority of this Incidental Harassment Authorization.

13. ION is required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS' Biological Opinion.

Endangered Species Act (ESA)

The bowhead whale is the only marine mammal species currently listed as endangered under the ESA that could occur during ION's proposed in-ice seismic survey period. The Beringia DPS of the Alaska stock of bearded seals and the Arctic stock of ringed seals are proposed for listing as threatened under the ESA. Final decisions concerning the listing of these species are pending.

NMFS' Permits and Conservation Division has initiated consultation with NMFS' Protected Resources Division under section 7 of the ESA on the issuance of an IHA to ION under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

NMFS is currently preparing an Environmental Assessment, pursuant to NEPA, to determine whether or not this proposed activity may have a significant effect on the human environment. This analysis will be completed prior to the issuance or denial of the IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to ION's 2012 in-ice seismic survey in the Beaufort and Chukchi Seas, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 13, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

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Part V

Department of Transportation

49 CFR Part 1

Organization and Delegation of Powers and Duties; Final Rule

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****[Docket No. DOT–OST–2012–0123]****49 CFR Part 1****RIN 2105–AE19****Organization and Delegation of Powers and Duties****AGENCY:** Office of the Secretary, DOT.**ACTION:** Final rule.

SUMMARY: The Office of the Secretary of Transportation (OST) is updating its regulations. These regulations govern the organization of the Department of Transportation and delegations of authority from the Secretary to Departmental officers including the Deputy Secretary, the Under Secretary, the General Counsel, the Assistant Secretaries, the Inspector General, and the heads of Operating Administrations. This rule is a publication of delegations made by the Secretary to other Departmental officials.

DATES: *Effective Date:* August 16, 2012.**FOR FURTHER INFORMATION CONTACT:**

Robert Gorman, Office of the General Counsel, at (202) 366–1162, via email at robert.gorman@dot.gov, or by writing to: Robert Gorman, Office of General Law, C–10, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:**Background**

This final rule updates the Code of Federal Regulations (CFR) sections that set forth the organization of the Department of Transportation and delegations of authority from the Secretary of Transportation to other Departmental officials including the Deputy Secretary, the Under Secretary, the General Counsel, the Assistant Secretaries, the Inspector General, and the heads of the Operating Administrations. The purpose of this rule is to provide a road map to the public and government officials regarding how the Department operates, which office is responsible for which tasks, and the authority pursuant to which Departmental offices act.

The regulations set forth in 49 CFR Part 1 are outdated and do not accurately reflect how the Department operates. For example, Part 1 still references the Coast Guard and the Transportation Security Administration; the Department is no longer responsible for these entities, and their presence in Part 1 creates unnecessary confusion.

This rule amends Part 1 in three ways. First, it removes items that are outdated

and are no longer the Department's responsibility. Second, it updates the Secretary's delegations to reflect new statutory responsibilities and organizational changes within the Department. Third, it clarifies the text, updates citations, and reorganizes the sections in Part 1 to increase transparency, accessibility, and readability.

This final rule does not impose substantive requirements. It simply updates the CFR to represent the current statutory and organizational posture of the Department. The final rule is ministerial in nature and relates only to Departmental management, organization, procedure, and practice. Therefore, the Department has determined that notice and comment are unnecessary and that the rule is exempt from prior notice and comment requirements under 5 U.S.C. 553 (b)(3)(A). As these changes will not have a substantive impact on the public, the Department does not expect to receive significant comments on the substance of the rule. Therefore, the Department finds that there is good cause under 5 U.S.C. 553(d)(3) to make this rule effective less than 30 days after publication in the **Federal Register**.

These revisions do not reflect all changes to Secretarial authorities or delegations that may arise under the Moving Ahead for Progress in the 21st Century Act ("MAP–21"), Public Law 112–141 (enacted July 6, 2012). The Department anticipates future revisions to Part 1 as a result of MAP–21.

Organization

Part 1 of 49 CFR lays out the structure of the Department of Transportation, describes the role of each Departmental component, and contains delegations of authority from the Secretary. Part 1 is being reorganized to make that information more accessible and easier to navigate. For example, the prior rule set forth the "key responsibilities" of the Office of the Secretary and the Operating Administrations in one section, described the "spheres of primary responsibility" for OST officers in a different section, and set forth the Secretary's delegations to Departmental components in various succeeding sections. In contrast, the amended rule describes each Departmental component in its own section, and places any delegated responsibilities to that component in an adjacent section. This final rule also clarifies the position of the Office of Inspector General within the Department.

Subsection A describes fundamental elements of the Department as a whole. Subsection B describes the organization

of the Office of the Secretary, the role of each OST component, and the Secretary's delegations to OST officers. Subsection C relates to the Office of Inspector General. Subsection D describes the role of each Operating Administration, and sets forth the Secretary's delegations to Operating Administrators.

Regulatory Analyses and Notices*Executive Order 12866 and DOT Regulatory Policies and Procedures*

The final rule is not considered a significant regulatory action under Executive Order 12866 and DOT Regulatory Policies and Procedures (44 FR 11034). It was not reviewed by the Office of Management and Budget. There are no costs associated with this rule.

Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation requirements of Executive Order 13132 do not apply.

Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act, 5 U.S.C. 553, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. We also do not believe this rule would impose any costs on small entities as it makes non-substantive corrections. Therefore, I certify this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

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

Unfunded Mandates Reform Act

The Office of the Secretary has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), organization and functions (Government agencies).

In consideration of the foregoing, the Department revises Title 49, Part 1 of the Code of Regulations to read as follows:

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES**Subpart A—General.**

Sec.

- 1.1 Overview.
- 1.2 Organization of the Department.
- 1.3 Exercise of authority.

Subpart B—Office of the Secretary

- 1.11 Overview.
- 1.13 OST key responsibilities.
- 1.15 OST structure.
- 1.17 OST line of secretarial succession.

OST Officials

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- 1.21 Reservations of Authority to the Secretary of Transportation.
- 1.22 Deputy Secretary.
- 1.23 Delegations to the Deputy Secretary.
- 1.24 Under Secretary of Transportation for Policy.
- 1.25 Delegations to the Under Secretary of Transportation for Policy.
- 1.25a Redelegations by the Under Secretary of Transportation for Policy.
- 1.26 General Counsel.
- 1.27 Delegations to the General Counsel.
- 1.27a Delegations to the Career Deputy General Counsel.
- 1.27b Delegations to the Assistant General Counsel for General Law.
- 1.30 Assistant Secretaries.
- 1.31 Assistant Secretary for Transportation Policy.
- 1.32 Assistant Secretary for Aviation and International Affairs.
- 1.33 Assistant Secretary for Budget and Programs and Chief Financial Officer.
- 1.34 Delegations to the Assistant Secretary for Budget and Programs and Chief Financial Officer.
- 1.35 Assistant Secretary for Governmental Affairs.
- 1.36 Delegations to the Assistant Secretary for Governmental Affairs.
- 1.37 Assistant Secretary for Administration.
- 1.38 Delegations to the Assistant Secretary for Administration.
- 1.38a Redelegations by the Assistant Secretary for Administration.
- 1.39 Executive Secretariat.
- 1.40 Departmental Office of Civil Rights.
- 1.41 Delegations to the Director of the Departmental Office of Civil Rights.
- 1.42 Office of Small and Disadvantaged Business Utilization.

- 1.43 Delegations to the Director of the Office of Small and Disadvantaged Business Utilization.
- 1.44 Office of Intelligence, Security and Emergency Response.
- 1.45 Delegations to the Director of the Office of Intelligence, Security and Emergency Response.
- 1.46 Office of Public Affairs.
- 1.47 Delegations to the Assistant to the Secretary and Director of Public Affairs.
- 1.48 Office of the Chief Information Officer.
- 1.49 Delegations to the Chief Information Officer.
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- 1.60 General Authorizations and Delegations to Secretarial Officers.

Subpart C—Office of Inspector General

- 1.70 Overview.
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Subpart D—Operating Administrations

- 1.80 Overview.
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- 1.82 The Federal Aviation Administration.
- 1.83 Delegations to the Federal Aviation Administrator.
- 1.84 The Federal Highway Administration.
- 1.85 Delegations to the Federal Highway Administrator.
- 1.86 The Federal Motor Carrier Safety Administration.
- 1.87 Delegations to the Federal Motor Carrier Safety Administrator.
- 1.88 The Federal Railroad Administration.
- 1.89 Delegations to the Federal Railroad Administrator.
- 1.90 The Federal Transit Administration.
- 1.91 Delegations to the Federal Transit Administrator.
- 1.92 The Maritime Administration.
- 1.93 Delegations to the Maritime Administrator.
- 1.94 The National Highway Traffic Safety Administration.
- 1.95 Delegations to the National Highway Traffic Safety Administrator.
- 1.96 The Pipeline and Hazardous Materials Safety Administration.
- 1.97 Delegations to the Pipeline and Hazardous Materials Safety Administrator.
- 1.98 The Research and Innovative Technology Administration.
- 1.99 Delegations to the Research and Innovative Technology Administrator.
- 1.100 The Saint Lawrence Seaway Development Corporation.
- 1.101 Delegations to Saint Lawrence Seaway Development Corporation Administrator.

Appendix A to Part I—Delegations and Redelegations by Secretarial Officers

Authority: 49 U.S.C. 322.

Subpart A—General**§ 1.1 Overview.**

This part describes the organization of the United States Department of

Transportation and provides for the performance of duties imposed upon, and the exercise of powers vested in, the Secretary of Transportation by law.

§ 1.2 Organization of the Department.

(a) The Secretary of Transportation is the head of the Department.

(b) The Department comprises the Office of the Secretary of Transportation (OST), the Office of the Inspector General (OIG), and the following Operating Administrations, each headed by an Administrator who reports directly to the Secretary:

- (1) The Federal Aviation Administration (FAA).
- (2) The Federal Highway Administration (FHWA).
- (3) The Federal Motor Carrier Safety Administration (FMCSA).
- (4) The Federal Railroad Administration (FRA).
- (5) The Federal Transit Administration (FTA).
- (6) The Maritime Administration (MARAD).
- (7) The National Highway Traffic Safety Administration (NHTSA).
- (8) The Pipeline and Hazardous Materials Safety Administration (PHMSA).
- (9) The Research and Innovative Technology Administration (RITA).
- (10) The Saint Lawrence Seaway Development Corporation (SLSDC).

§ 1.3 Exercise of authority.

(a) In exercising powers and performing duties delegated by this part or redelegated pursuant thereto, officials of the Department of Transportation are governed by applicable laws, Executive Orders and regulations and by policies, objectives, plans, standards, procedures, and limitations as may be issued from time to time by or on behalf of the Secretary, or, with respect to matters under their jurisdictions, by or on behalf of the Deputy Secretary, the Under Secretary, the General Counsel, an Assistant Secretary, the Inspector General, or an Administrator. This includes, wherever specified, the requirement for advance notice to, prior coordination with, or prior approval by an authority other than that of the official proposing to act.

(b) Subject to the reservations of authority to the Secretary of Transportation in section 1.21, the Deputy Secretary, the Under Secretary, the General Counsel, the Assistant Secretaries, the Inspector General, and the Administrators exercise the powers and perform the duties delegated to them under this part.

(c) For delegations of authority vested in the Secretary by Executive Order

13526 (see also E.O. 12958 and 12065) originally to classify documents as secret and confidential, see § 8.11 of this subtitle. Previous delegations of authority to Department of Transportation officials to originally classify information as secret and confidential are hereby rescinded.

Subpart B—Office of the Secretary

§ 1.11 Overview.

This subpart sets forth the OST's key responsibilities, its basic organizational structure, and the line of Secretarial succession in time of need. It also describes the key responsibilities of OST officials, and sets forth delegations and reservations of authority to those officials.

§ 1.13 OST Key Responsibilities.

- (a) The OST is responsible for:
 - (1) Providing leadership in formulating and executing well-balanced national and international transportation objectives, policies, and programs to ensure the Nation has safe, economically competitive transportation systems that support U.S. interests, that are maintained in a state of good repair, that foster environmental sustainability, and that support livable communities;
 - (2) Chairing the Department's Safety Council;
 - (3) Stimulating and promoting research and development in all modes and types of transportation, with special emphasis on transportation safety;
 - (4) Coordinating the various transportation programs of the Federal Government;
 - (5) Encouraging maximum private development of transportation services;
 - (6) Providing responsive, timely, and effective liaison with Congress and public and private organizations on transportation matters;
 - (7) Providing innovative approaches to urban transportation and environmental enhancement programs;
 - (8) Overseeing the Department's multimodal freight policy;
 - (9) Providing effective management of the Department as a whole to ensure it achieves organizational excellence;
 - (10) Leading Department-wide efforts for greater transparency and accountability;
 - (11) Administering the Department's Livable Communities initiative to increase access to convenient and affordable transportation choices and improve transportation networks that accommodate pedestrians and bicycles;
 - (12) Coordinating the Department's credit and financial assistance programs by leading the Credit Council to ensure responsible financing for the Nation's transportation projects; and

(13) Formulating and executing policies to ensure effective operation of the Department's aviation economic program including functions related to consumer protection and civil rights, domestic airline licensing matters, competition oversight, airline data collection, and review of international route negotiations and route awards to carriers.

§ 1.15 OST Structure.

(a) *Secretary and Deputy Secretary.* The Secretary and Deputy Secretary are assisted by the following, all of which report directly to the Secretary:

- (1) The Chief of Staff;
- (2) The Executive Secretariat;
- (3) The Departmental Office of Civil Rights;
- (4) The Office of Small and Disadvantaged Business Utilization;
- (5) The Office of Intelligence, Security and Emergency Response;
- (6) The Office of Public Affairs;
- (7) The Office of the Chief Information Officer; and
- (8) The Office of Drug & Alcohol Policy & Compliance.

(b) The Under Secretary of Transportation for Policy, the General Counsel, and the Assistant Secretaries for Administration, Budget and Programs, and Governmental Affairs also report directly to the Secretary.

(c) *Office of the Under Secretary of Transportation for Policy.* This Office is composed of:

- (1) The Office of the Assistant Secretary for Transportation Policy, which includes:
 - (i) The Office of Safety, Energy, and the Environment,
 - (ii) The Office of Infrastructure Finance and Innovation, and
 - (iii) The Office of Economic and Strategic Analysis.
- (2) The Office of the Assistant Secretary for Aviation and International Affairs, which includes:
 - (i) The Office of International Transportation and Trade,
 - (ii) The Office of International Aviation, and
 - (iii) The Office of Aviation Analysis.
- (d) *Office of the General Counsel.* This Office is composed of:
 - (1) The Office of General Law,
 - (2) The Office of International Law,
 - (3) The Office of Litigation,
 - (4) The Office of Legislation,
 - (5) The Office of Regulation and Enforcement,
 - (6) The Office of Operations, which includes the Freedom of Information Act (FOIA) Office,
 - (7) The Office of Aviation Enforcement and Proceedings, which includes the Aviation Consumer Protection Division, and

(8) The Center for Alternative Dispute Resolution.

(e) *Office of the Assistant Secretary for Budget and Programs and Chief Financial Officer.* This Office is composed of:

- (1) The Office of Budget and Program Performance,
- (2) The Office of Financial Management, and
- (3) The Office of the Chief Financial Officer for the Office of the Secretary.

(f) *Office of the Assistant Secretary for Governmental Affairs.* This Office contains the following functional areas: Congressional Affairs and Intergovernmental Affairs; and includes a Deputy Assistant Secretary for Tribal Government Affairs.

(g) *Office of the Assistant Secretary for Administration.* This Office is composed of:

- (1) The Office of Audit Relations,
- (2) The Office of Human Resource Management,
- (3) The Office of Hearings,
- (4) The Office of Security,
- (5) The Office of the Senior Procurement Executive,
- (6) The Office of Financial Management and Transit Benefit Programs, and
- (7) The Office of Facilities, Information and Asset Management.

§ 1.17 OST Line of Secretarial Succession.

(a) The following officials, in the order indicated, shall act as Secretary of Transportation, in case of the absence or disability of the Secretary, until the absence or disability ceases, or in the case of a vacancy, until a successor is appointed. Notwithstanding the provisions of this section, the President retains discretion, to the extent permitted by the law, to depart from this order in designating an acting Secretary of Transportation.

- (1) Deputy Secretary.
- (2) Under Secretary of Transportation for Policy.
- (3) General Counsel.
- (4) Assistant Secretary for Budget and Programs and CFO.
- (5) Assistant Secretary for Transportation Policy.
- (6) Assistant Secretary for Governmental Affairs.
- (7) Assistant Secretary for Aviation and International Affairs.
- (8) Assistant Secretary for Administration.
- (9) Administrator of the Federal Highway Administration.
- (10) Administrator of the Federal Aviation Administration.
- (11) Administrator of the Federal Motor Carrier Safety Administration.
- (12) Administrator of the Federal Railroad Administration.

(13) Administrator of the Federal Transit Administration.

(14) Administrator of the Maritime Administration.

(15) Administrator of the Pipeline and Hazardous Materials Safety Administration.

(16) Administrator of the National Highway Traffic Safety Administration.

(17) Administrator of the Research and Innovative Technology Administration.

(18) Administrator of the Saint Lawrence Seaway Development Corporation.

(19) Regional Administrator, Southern Region, Federal Aviation Administration.

(20) Director, Resource Center, Lakewood, Colorado, Federal Highway Administration.

(21) Regional Administrator, Northwest Mountain Region, Federal Aviation Administration.

(b) Without regard to the foregoing, a person directed to perform the duties of the Secretary pursuant to 5 U.S.C. 3347 (the Vacancies Act) shall act as Secretary of Transportation.

OST Officials

§ 1.20 Secretary of Transportation.

The Secretary is the head of the Department. The Secretary exercises oversight of all of the OST components, as well as each of the Operating Administrations, and overall planning, direction, and control of the Department's agenda.

§ 1.21 Reservations of Authority to the Secretary of Transportation.

(a) All powers and duties that are not delegated by the Secretary in 49 CFR Part 1, or otherwise vested in officials other than the Secretary, are reserved to the Secretary. Except as otherwise provided, the Secretary may exercise powers and duties delegated or assigned to officials other than the Secretary.

(b) The delegations of authority in this part do not extend to the following actions, authority for which is reserved to the Secretary or the Secretary's delegatee within the Office of the Secretary:

(1) General transportation matters.

(i) Transportation leadership authority pursuant to 49 U.S.C. 301 (Duties of the Secretary of Transportation: Leadership, consultation, and cooperation).

(ii) Functions relating to transportation activities, plans, and programs under 49 U.S.C. 304 (Joint activities with the Secretary of Housing and Urban Development).

(iii) Authority to develop, prepare, coordinate, transmit, and revise

transportation investment standards and criteria under 49 U.S.C. 305

(Transportation investment standards and criteria).

(iv) Authority relating to standard time zones and advanced (daylight) time (15 U.S.C. 260 *et seq.*).

(2) *Legislation, rulemakings, and reports.* (i) Submission to the President, the Director of the Office of Management and Budget, or Congress of proposals or recommendations for legislation, significant rulemakings and related documents as authorized by law, Executive Orders, proclamations or reorganization plans, or other Presidential action.

(ii) Submission to the President or Congress of any report or any proposed transportation policy or investment standards or criteria, except with the prior written approval of the Secretary.

(iii) Submission of the annual statement on systems of internal accounting and administrative control under the Federal Managers' Financial Integrity Act of 1982 (FMFIA) (31 U.S.C. 3512 note).

(3) *Budget and finance.* (i) Approval and submission to the Office of Management and Budget of original or amended budget estimates or requests for allocations of personnel ceiling (31 U.S.C. 1108).

(ii) Approval of requests for legislation which, if enacted, would authorize subsequent appropriations for the Department (31 U.S.C. 581b).

(iii) Transfer of the balance of an appropriation from one operating element to another within the Department (31 U.S.C. 581c).

(iv) Submission to the Director of the Office of Management and Budget of requests for the transfer of the balance or portions of an appropriation from one element to another within the Department (31 U.S.C. 665).

(4) *Personnel.* (i) Recommendations to the Office of Personnel Management regarding the allocation of a position to the Senior Executive Service (SES) or Senior Level (SL), or Scientific and Professional Positions (ST) (5 U.S.C. 5108).

(ii) Recommendations to the Office of Personnel Management of approval of the qualifications of any candidate for a position in the SES or SL.

(iii) Recommendations to the Office of Personnel Management of a Lump-Sum Incentive Award in Excess of \$10,000 (5 U.S.C. 4502).

(iv) Approval of the following actions relating to Schedules A, B, C, or D and noncareer executive assignment positions or incumbents, except for actions under Schedules A and B

limited to one year or less at grade GS-9 or lower, or an equivalent level:

(A) Establishment or abolition of positions;

(B) Hires;

(C) Promotions other than quality and periodic within-grade promotions;

(D) Transfer of personnel to Schedule A, B, C, or D positions or non-career executive assignment positions, either permanently or on detail; and

(E) Transfer of personnel from Schedule A, B, C, or D or non-career executive assignment positions to career Civil Service positions.

(v) Approval of employment of experts or consultants.

(vi) Authority to determine the maximum limit of age for appointment of air traffic controllers as provided by 5 U.S.C. 3307(b).

(vii) Authority to develop, coordinate, and issue wage schedules under the Federal Wage system.

(5) *Security.* (i) Authorizing the filling of a critical-sensitive position for a limited period by a person on whom a preappointment full field investigation has not been completed (Executive Order 10450) as amended and Executive Order 12968 as amended by Executive Order 13467.

(ii) Requesting Presidential approval of a claim of executive privilege with respect to information requested by a Congressional committee or Member of Congress.

(iii) Making determinations prescribed by Executive Order 12968 as amended by Executive Order 13467 and 32 CFR Part 147 relating to the adjudication and final denial of access to classified information to industry personnel.

(iv) Making those determinations or delegations prescribed by Executive Order 13526 that are reserved to the head of the Department.

(6) *Procurement.* Exercising the extraordinary authority for defense contracts provided for in Public Law 85-804 [(50 U.S.C. 1431-1435)].

(7) *Printing.* Requesting approval of the Joint Committee on Printing for any procurement or other action requiring Committee approval.

(8) *Interagency agreements.* Executing any written interdepartmental or interagency agreement with the head of another executive department or agency.

(9) *Withholding of funds.* Withholding or suspension of Federal-Aid Highway funds on a state-wide basis and the waiver or compromise of such withholding or suspension, except for the administration of 23 U.S.C. 141 and 154, which are specifically delegated in § 1.85 (FHWA) and § 1.95 (NHTSA).

(10) *National Highway Safety Advisory Committee.* Directing the

National Highway Safety Advisory Committee to meet (23 U.S.C. 404(c)).

(11) *Maritime Subsidy Board.*

Reviewing decisions, reports, orders and other actions of the Maritime Subsidy Board.

(12) *Cash purchases of passenger transportation.* The authority under Federal Property Management Regulation G-72, as amended, to authorize and approve cash purchases for emergency passenger transportation services costing more than \$100.

(13) *Solicitation of gifts.* The implied authority to solicit gifts associated with 49 U.S.C. 326(a).

(14) *Foreign travel.* Approving official travel outside of the United States.

(15) *United States Merchant Marine Academy.* Pursuant to 49 U.S.C. 51303, the authority to appoint each year without competition as cadets at the United States Merchant Marine Academy not more than 40 qualified individuals with qualities the Secretary considers to be of special value to the Academy.

(16) *Challenges and Competitions.* Approving any challenge or competition administered by any office or Operating Administration of the Department.

(17) *Committees.* Approving the establishment, modification, extension, or termination of all advisory committees (including industry advisory committees) subject to the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App.), and the designation of Departmental representatives to those committees.

(18) *Credit assistance approval.* Granting final approval of applications for credit assistance under the Transportation Infrastructure Finance and Innovation Act (TIFIA), 23 U.S.C. 601-609.

§ 1.22 Deputy Secretary.

Along with the Secretary, the Deputy Secretary exercises oversight of all of the OST components, as well as each of the Operating Administrations, and overall planning, direction, and control of the Department's agenda. The Deputy Secretary:

(a) May exercise the authority of the Secretary, except where specifically limited by law, order, regulation, or instructions of the Secretary;

(b) Serves as the Chief Operating Officer; and

(c) Serves as the Chief Acquisition Officer.

§ 1.23 Delegations to the Deputy Secretary.

The Deputy Secretary may exercise the authority of the Secretary, except where specifically limited by law, order,

regulations, or instructions of the Secretary. In addition, the Deputy Secretary is delegated authority to:

(a) Exercise executive control over Departmental Budgeting and Program Evaluation.

(b) Serve as Chairman of the Departmental Executive Resources Board and its Executive Committee.

(c) Serve as the Chair of the Department's Safety Council.

(d) Serve as the Chair of the Department's Credit Council.

(e) Approve the establishment, modification, extension, or termination of:

(1) Department-wide (intra-department) committees affecting more than one program.

(2) OST-sponsored interagency committees.

(f) Approve the designation of:

(1) Departmental representatives and the chairman for interagency committees sponsored by the Office of the Secretary.

(2) Departmental members for international committees.

(g) Serve as the representative of the Secretary on the board of directors of the National Railroad Passenger Corporation and carry out the functions vested in the Secretary as a member of the board by 49 U.S.C. 24302.

(h) Approve the initiation of regulatory action, as defined in E.O. 12866, by Secretarial offices and Operating Administrations.

§ 1.24 Under Secretary of Transportation for Policy.

The Under Secretary provides leadership in the Department's development of policies and programs to protect and enhance the safety, adequacy, and efficiency of the transportation system and services. The Office of the Under Secretary serves as the focal point within the Federal Government for coordination of intermodal transportation policy, which brings together departmental intermodal perspectives, advocates intermodal interests, and provides secretarial leadership and visibility on issues that involve or affect more than one Operating Administration.

§ 1.25 Delegations to the Under Secretary of Transportation for Policy.

The Under Secretary is delegated the following authorities:

(a) Lead the development of transportation policy and serve as the principal adviser to the Secretary on all transportation policy matters.

(b) Establish policy and ensure uniform departmental implementation of the National Environmental Policy

Act of 1969, Public Law 91-190, as amended (42 U.S.C. 4321-4347) within the Department of Transportation.

(c) Oversee the implementation of 49 U.S.C. 303 (Policy on lands, wildlife and waterfowl refuges, and historic sites).

(d) Represent the Secretary of Transportation on various interagency boards, committees, and commissions to include the Architectural and Transportation Barriers Compliance Board and the Advisory Council on Historic Preservation and the Trade Policy Review Group and the Trade Policy Staff Committee.

(e) Serve as the Department's designated principal conservation officer pursuant to section 656 of the Department of Energy Organization Act, Public Law 94-91 [42 U.S.C. 7266], and carry out the functions vested in the Secretary by section 656 of the Act, which pertains to planning and implementing energy conservation matters with the Department of Energy.

(f) Carry out the functions of the Secretary pertaining to aircraft with respect to Transportation Order T-1 (44 CFR chapter IV) under the Defense Production Act of 1950, as amended, Public Law 81-774, 64 Stat. 798 [50 U.S.C. App. 2061 *et seq.*] and Executive Order 10480 (3 CFR, 1949-1953 comp., p. 962), as amended (see also Executive Order 10773 and 12919).

(g) Serve as Department of Transportation member of the Interagency Group on International Aviation, and pursuant to Executive Order No. 11382 (3 CFR, 1966-1970 comp., p. 691), as amended, serve as Chair of the Group.

(h) Serve as second alternate representing the Secretary of Transportation to the Trade Policy Committee as mandated by Reorganization Plan No. 3 of 1979 (5 U.S.C. App. at 1381), as amended, and Executive Order No. 12188 (3 CFR, 1980 comp., p. 131), as amended.

(i) As supplemented by 14 CFR Part 385, and except as provided in §§ 1.99(j) (RITA), and 1.27 (General Counsel) of this part, carry out the functions transferred to the Department from the Civil Aeronautics Board and other related functions and authority vested in the Secretary under the following:

(1) Sections 40103(a)(2) (relating to the consultation with the Architectural and Transportation Barriers Compliance Board before prescribing regulations or procedures that will have a significant impact on accessibility of commercial airports for handicapped individuals), and (c) (relating to foreign aircrafts); 40105 (relating to international negotiations, agreements, and

obligations); 40109(a), (c), (g), 46301(b) (smoke alarm penalty), (d), (f), (g) (relating to the authority to exempt certain air carriers) and (h); 40113(a) and (c); 40114(a) (relating to reports and records); 40115 (relating to the withholding of information from public disclosure) of Chapter 401 of 49 U.S.C.; and 40116 (relating to the Anti-Head Tax Act);

(2) The following chapters of title 49, U.S.C., except as related to departmental regulation of airline consumer protection and civil rights which is delegated to the General Counsel at § 1.27:

(i) Chapter 411 of title 49, U.S.C., relating to air carrier certification;

(ii) Chapter 413 of title 49, U.S.C., relating to foreign air transportation;

(iii) Chapter 415 of title 49, U.S.C., relating to pricing;

(iv) Chapter 417 of title 49, U.S.C., relating to the operations of air carriers, except sections 41721–41723;

(v) Chapter 419 of title 49, U.S.C. and 39 U.S.C. 5402, relating to the transportation of mail; and

(vi) Section 42303 of 49 U.S.C., relating to the management of the Web site regarding the use of insecticides in passenger aircraft.

(3) Section 42111 of title 49, U.S.C. with respect to mutual aid agreements as it relates to foreign air transportation;

(4) Chapters 461 and 463 of title 49, U.S.C., relating to aviation investigations, proceedings, and penalties under Part A of Subtitle VII of title 49, U.S.C. except for those sections delegated to the General Counsel under § 1.27, and to the Federal Aviation Administrator under § 1.83 of this part;

(5) Chapter 473 of title 49, U.S.C., relating to international airport facilities.

(6) Section 11 of the Clayton Act, Public Law 63–212 [15 U.S.C. 21], relating to air carriers and foreign air carriers.

(7) Section 3 of An Act to Encourage Travel in the United States, and for other purposes, 54 Stat. 773 [16 U.S.C. 18b].

(8) Sections 108(a)(4), 621(b)(5), 704(a)(5), and 814(b)(5) of the Consumer Credit Protection Act, Public Law 90–321 [15 U.S.C. 1607(a)(4), 1681s(b)(5), 1691c(a)(5), and 1692l(b)(5)].

(j) Carry out the functions vested in the Secretary by 49 U.S.C. 44907(b)(1), (c), and (e) related to the security of foreign airports in coordination with the General Counsel, the Federal Aviation Administrator, and the Assistant Secretary for Administration.

(k) Carry out section 101(a)(2) of the Air Transportation Safety and System Stabilization Act, Public Law 107–42

[49 U.S.C. 40101 note], as delegated to the Secretary of Transportation by the President pursuant to a Presidential Memorandum dated September 25, 2001.

(l) Exercise the authority vested in the Secretary by section 11143 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, 119 Stat. 1144 (SAFETEA–LU), to manage the day-to-day activities associated with implementation of section 11143 regarding private activity bonds and tax-exempt financing of highway projects and rail-truck facilities.

(m) In coordination with the General Counsel, to carry out the duties of the Secretary under Executive Orders 12866 and 13563 to establish the value of statistical life in connection with assessing the costs and benefits of Departmental regulatory action.

§ 1.25a Redelegations by the Under Secretary of Transportation for Policy.

(a) The Assistant Secretary for Transportation Policy is delegated authority to:

(1) Establish policy and maintain oversight of implementation of the National Environmental Policy Act of 1969, Public Law 91–190, as amended (42 U.S.C. 4321–4347) within the Department of Transportation.

(2) Oversee the implementation of 49 U.S.C. 303 (Policy on lands, wildlife and waterfowl refuges, and historic sites).

(3) Represent the Secretary of Transportation on various interagency boards, committees, and commissions to include the Architectural and Transportation Barriers Compliance Board and the Advisory Council on Historic Preservation and the Trade Policy Review Group and the Trade Policy Staff Committee.

(4) Serve as the Department's designated principal conservation officer pursuant to section 656 of the Department of Energy Organization Act, Public Law 94–91 [42 U.S.C. 7266], and carry out the functions vested in the Secretary by section 656 of the Act, which pertains to planning and implementing energy conservation matters with the Department of Energy.

(5) Carry out the functions of section 42303 of 49 U.S.C., relating to the management of the Web site regarding the use of insecticides in passenger aircraft.

(6) In coordination with the General Counsel, to carry out the duties of the Secretary under Executive Orders 12866 and 13563 to establish the value of statistical life in connection with

assessing the costs and benefits of Departmental regulatory action.

(7) Carry out the duties of the Secretary under Executive Orders 12866 and 13563 to establish the value of time in connection with assessing the costs and benefits of Departmental regulatory action.

(b) The Assistant Secretary for Aviation and International Affairs is delegated authority to:

(1) Carry out the functions of the Secretary pertaining to aircraft with respect to Transportation Order T–1 (44 CFR chapter IV) under the Defense Production Act of 1950, as amended, Public Law 81–774, 64 Stat. 798 [50 U.S.C. App. 2061 *et seq.*] and Executive Order 10480 (3 CFR, 1949–1953 comp., p. 962), as amended (see also Executive Order 10773 and 12919).

(2) Serve as Department of Transportation member of the Interagency Group on International Aviation, and pursuant to Executive Order No. 11382 (3 CFR, 1966–1970 comp., p. 691), serve as Chair of the Group.

(3) Serve as second alternate representing the Secretary of Transportation to the Trade Policy Committee as mandated by Reorganization Plan No. 3 of 1979 (5 U.S.C. App. at 1381), as amended, and Executive Order No. 12188 (3 CFR, 1980 comp., p. 131).

(4) As supplemented by 14 CFR Part 385, and except as provided in §§ 1.99 (RITA), and 1.27 (General Counsel) of this part, carry out the functions transferred to the Department from the Civil Aeronautics Board and other related functions and authority vested in the Secretary under the following provisions of Title 49, U.S.C.:

(i) Sections 40103(a)(2) (relating to the consultation with the Architectural and Transportation Barriers Compliance Board before prescribing regulations or procedures that will have a significant impact on accessibility of commercial airports for handicapped individuals), and (c) (relating to foreign aircrafts); 40105 (relating to international negotiations, agreements, and obligations); 40109(a), (c), (g), 46301(b) (smoke alarm penalty), (d), (f), (g) (relating to the authority to exempt certain air carriers) and (h); 40113(a) and (c); 40114(a) (relating to reports and records); 40115 (relating to the withholding of information from public disclosure; and 40116 (relating to the Anti-Head Tax Act);

(ii) The following chapters of title 49, U.S.C., except as related to departmental regulation of airline consumer protection and civil rights which is

delegated to the General Counsel at § 1.27:

(A) Chapter 411, relating to air carrier certification;

(B) Chapter 413, relating to foreign air transportation;

(C) Chapter 415, relating to pricing;

(D) Chapter 417, relating to the operations of air carriers, except section 41721–41723;

(E) Chapter 419, and 39 U.S.C. 5402, relating to the transportation of mail;

(iii) Section 42111 of title 49, U.S.C. with respect to mutual aid agreements as it relates to foreign air transportation;

(iv) Chapters 461 and 463 of title 49, U.S.C., relating to aviation investigations, proceedings, and penalties under Part A of 49 U.S.C. Subtitle VII except for those sections delegated to the General Counsel under § 1.27, and to the Federal Aviation Administrator under § 1.83 of this part;

(v) Chapter 473 of title 49, U.S.C., relating to international airport facilities.

(vi) Section 11 of the Clayton Act, Public Law 63–212 [15 U.S.C. 21], relating to air carriers and foreign air carriers.

(vii) Section 3 of An Act to Encourage Travel in the United States, and for other purposes, 54 Stat. 773 [16 U.S.C. 18b].

(viii) Sections 108(a)(4), 621(b)(5), 704(a)(5), and 814(b)(5) of the Consumer Credit Protection Act, Public Law 90–321 [15 U.S.C. 1607(a)(4), 1681s(b)(5), 1691c(a)(5), and 1692l(b)(5)].

(5) Carry out the functions vested in the Secretary by 49 U.S.C. 44907(b)(1), (c), and (e) related to the security of foreign airports in coordination with the General Counsel, the Federal Aviation Administrator, and the Assistant Secretary for Administration.

(6) Carry out section 101(a)(2) of the Air Transportation Safety and System Stabilization Act, Public Law 107–42 [49 U.S.C. 40101 note], as delegated to the Secretary of Transportation by the President pursuant to a Presidential Memorandum dated September 25, 2001.

(7) Carry out the functions vested in the Secretary by 49 U.S.C. 47129, relating to resolution of disputes over the reasonableness of fees imposed upon air carriers.

§ 1.26 General Counsel.

The General Counsel is the chief legal officer of the Department, legal advisor to the Secretary, and final authority within the Department on questions of law. The Office of the General Counsel provides legal advice to the Secretary and secretarial offices, and supervision, coordination, and review of the legal

work of the Chief Counsel Offices in the Department. The General Counsel participates with each Operating Administrator in the performance reviews of Chief Counsel. The General Counsel is responsible for retention of outside counsel, and for the approval of the hiring and promotion of departmental attorneys (other than in the Federal Aviation Administration). The General Counsel is also responsible for departmental regulation under statutes including the Air Carrier Access Act, statutes prohibiting unfair and deceptive practices in air transportation, the Americans with Disabilities Act, the Disadvantaged Business Enterprise program, and the Uniform Time Act. The General Counsel coordinates all international legal matters, and departmental participation in proceedings before other federal and state agencies. The General Counsel provides oversight of departmental litigation, regulation, legislation, Freedom of Information Act compliance, and administrative enforcement.

§ 1.27 Delegations to the General Counsel.

The General Counsel is delegated authority to:

(a) Conduct all rulemaking proceedings under the Americans with Disabilities Act, the Disadvantaged Business Enterprise program, and the Uniform Time Act, as amended (15 U.S.C. 260 *et seq.*).

(b) Determine the practicability of applying the standard time of any standard time zone to the movements of any common carrier engaged in interstate or foreign commerce and issue operating exceptions in any case in which the General Counsel determines that it is impractical to apply the standard time (49 CFR 71.1).

(c) Issue regulations making editorial changes or corrections to the regulations of the Office of the Secretary.

(d) Grant permission, under specific circumstances, to deviate from a policy or procedure prescribed by the regulations of the Office of the Secretary (49 CFR Part 9) with respect to the testimony of OST employees as witnesses in legal proceedings, the serving of legal process and pleadings in legal proceedings involving the Secretary or his Office, and the production of records of that Office pursuant to subpoena.

(e) Respond to petitions for rulemaking or petitions for exemptions in accordance with 49 CFR 5.13(c) (Processing of petitions), and notify petitioners of decisions in accordance with 49 CFR 5.13(d).

(f) Provide counsel to employees on questions of conflict of interest covered by departmental regulations on employee responsibility and conduct.

(g) Coordinate the issuance of proposed Executive Orders and proclamations for transmittal to the Office of Management and Budget for action by the White House.

(h) Except with respect to proceedings relating to safety fitness of an applicant (49 U.S.C. 307), decide on requests to intervene or appear before courts (with the consent of the Department of Justice) or agencies to present the views of the Department, subject to the concurrence of the Secretary.

(i) Exercise the authority delegated to the Department by the Assistant Attorney General, Land and Natural Resources Division, in his order of October 2, 1970, to approve the sufficiency of the title to land being acquired by purchase or condemnation by the United States for the use of the Department. (See also Appendix 1 relating to delegations to Operating Administration Chief Counsel).

(j) Consider, ascertain, adjust, determine, compromise, and settle for an amount not exceeding \$100,000, any tort claim arising from the activities of any employee of the Office of the Secretary; and request the approval of the Attorney General for any such award, compromise, or settlement in excess of \$100,000 (28 CFR part 14.).

(k) Compromise, suspend collection action on, or terminate claims of the United States not exceeding \$100,000 (excluding interest) that are referred to, or arise out of the activities of the Office of the Secretary of Transportation.

(l) Conduct coordination with foreign governments under section 118 of the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1428).

(m) Exercise review authority under 49 U.S.C. 41307 (related actions about foreign air transportation) delegated to the Secretary by the President in Executive Order 12597.

(n) Assist and protect consumers in their dealings with the air transportation industry and conduct all departmental regulation of airline consumer protection and civil rights pursuant to chapters 401 (General Provisions), 411 (Air Carrier Certificates), 413 (Foreign Air Transportation), 417 (Operations of Carriers), and 423 (Passenger Air Service Improvements) of title 49 U.S.C.

(o) Carry out the functions vested in the Secretary by 49 U.S.C. 40119(b) (Security and research and development activities), as implemented by 49 CFR part 15 (Protection of Sensitive Security Information), relating to the determination that information is

Sensitive Security Information, in consultation and coordination with the Office of Intelligence, Security and Emergency Response.

(p) Appear on behalf of the Department on the record in hearing cases, and initiate and carry out enforcement actions on behalf of the Department, under the authority transferred to the Department from the Civil Aeronautics Board as described in §§ 1.25 and 1.25a (delegations to and redelegations by the Under Secretary), and 1.99 (RITA). This includes the authority to compromise penalties under 49 U.S.C. 46301 (civil penalties); to issue appropriate orders, including cease and desist orders, under 49 U.S.C. 46101 (complaints and investigations); and to require the production of information, under 49 U.S.C. 41708, enter carrier property and inspect records, under 49 U.S.C. 41709, and inquire into the management of the business of a carrier under 49 U.S.C. 41711 (Air carrier management inquiry and cooperation with other authorities), as appropriate to the enforcement responsibilities. In the event that such an enforcement matter comes before the Secretary of Transportation for adjudication, the Deputy General Counsel shall advise the Secretary.

(q) Initiate and carry out enforcement actions relating to:

(1) Foreign airport security on behalf of the Department under 49 U.S.C. 44907; and

(2) The Consumer Credit Protection Act under section 4(a)(5) of the Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98-443) [15 U.S.C. 1607(a)(4), 1681s(b)(5), 1691c(a)(5) and 1692l(b)(5)].

(r) Administer 5 U.S.C. 552 (FOIA) and 49 CFR part 7 (Public Availability of Information) in connection with the records of the Office of the Secretary and issue procedures to ensure uniform departmental implementation of statutes and regulations regarding public access to records.

(s) Prepare reports by carriers on incidents involving animals during air transport pursuant to 49 U.S.C. 41721.

(t) Exercise authority vested in the Secretary by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, 110 Stat. 1321), to promulgate rules that adjust civil penalties with respect to aviation enforcement.

(u) In coordination with the Under Secretary, to carry out the duties of the Secretary under Executive Orders 12866 and 13563 to establish the value of statistical life in connection with

assessing the costs and benefits of Departmental regulatory action.

(v) Approve the initiation of regulatory action, as defined in E.O. 12866, by Secretarial offices and Operating Administrations in the event that the Deputy Secretary is absent or otherwise unavailable to exercise such authority (see § 1.23(h)).

§ 1.27a Delegations to the Career Deputy General Counsel.

The career Deputy General Counsel is delegated authority to:

(a) Serve as the Department's Designated Agency Ethics Official in accordance with 5 CFR 2638.202;

(b) Serve as the Department's Dispute Resolution Specialist pursuant to section 3(b) of the Alternative Dispute Resolution Act of 1996, Public Law 104-320, 5 U.S.C. App.; and

(c) Serve as the Department's Chief FOIA Officer under 5 U.S.C. 552(j).

§ 1.27b Delegations to the Assistant General Counsel for General Law.

The Assistant General Counsel for General Law is delegated authority to serve as the Department's Alternate Agency Ethics Official in accordance with 5 CFR 2638.202.

§ 1.30 Assistant Secretaries.

(a) In performing their functions, the Assistant Secretaries are responsible for continuing liaison and coordination among themselves and with the Operating Administrations to:

(1) Avoid unnecessary duplication of effort by or in conflict with the performance of similar activities by the Operating Administrations and the other Assistant Secretaries pursuant to their Secretarial delegations of authority or other legal authorities; and

(2) Assure that the views of the Operating Administrations are considered in developing departmental policies, plans, and proposals. The Assistant Secretaries are also available to assist, as appropriate, the Operating Administrations in implementing departmental policy and programs. As primary staff advisors to the Secretary, the Assistant Secretaries are concerned with transportation matters of the broadest scope, including modal, intermodal, and other matters of Secretarial interest.

(b) There are exceptions to the normal staff role described in paragraph (a) of this section. In selected instances, the Secretary has specifically delegated to Assistant Secretaries authority which they may exercise on the Secretary's behalf.

§ 1.31 Assistant Secretary for Transportation Policy.

The Assistant Secretary for Transportation Policy provides policy advice to the Secretary, the Deputy Secretary, and the Under Secretary. The Office of the Assistant Secretary for Transportation Policy is responsible for: public policy development, coordination, and evaluation for all aspects of transportation, except in the areas of aviation and international affairs, with the goal of making the Nation's transportation resources function as an integrated national system; evaluation of private transportation sector operating and economic issues; evaluation of public transportation sector operating and economic issues; regulatory and legislative initiatives and review; energy, environmental, disability, and safety policy and program development and review; and transportation infrastructure assessment and review. For delegations to the Assistant Secretary for Transportation Policy, see § 1.25a(a).

§ 1.32 Assistant Secretary for Aviation and International Affairs.

The Office of the Assistant Secretary for Aviation and International Affairs is responsible for policy development, coordination, and evaluation of issues involving aviation, as well as international issues involving all areas of transportation; private sector evaluation; international transportation and transport-related trade policy and issues; regulatory and legislative initiatives and review of maritime/shipbuilding policies and programs; transport-related trade promotion; coordination of land transport relations with Canada and Mexico; economic regulation of the airline industry while placing maximum reliance on market forces and on actual and potential competition; the essential air service program and other rural air service programs; and, in coordination with the FAA, promotion of the aerospace industry. For delegations to the Assistant Secretary for Aviation and International Affairs, see § 1.25a(b).

§ 1.33 Assistant Secretary for Budget and Programs and Chief Financial Officer.

(a) The Assistant Secretary for Budget and Programs is the principal budget and financial advisor to the Secretary and serves as Chief Financial Officer (CFO) for the Department. The Assistant Secretary for Budget and Programs and CFO provides oversight and policy guidance for all budget, financial management, program performance, and internal control activities of the

Department and its Operating Administrations.

(b) The Assistant Secretary for Budget and Programs and CFO concurs in the appointment and promotion of Chief Financial Officers, Budget Officers, and Directors of Finance of the Department and its Operating Administrations, and participates with each Administrator in the performance reviews of Chief Financial Officers, Budget Officers, and Directors of Finance in each of the Operating Administrations.

(c) The Assistant Secretary for Budget and Programs and CFO, in consultation with the Chief Information Officer, may designate any information technology system as a financial management system under the CFO's policy and oversight area of responsibility.

(d) The Assistant Secretary for Budget and Programs and CFO serves as the Vice Chair of the Department's Credit Council. The Office of the Assistant Secretary supports the Department's Credit Council by analyzing applications for the Department's various credit programs. The CFO also oversees the TIFIA program and the TIFIA Joint Program Office on behalf of the Secretary, including the evaluation of individual projects, and provides overall policy direction and program decisions for the TIFIA program.

(e) The Office of the Assistant Secretary for Budget and Programs and CFO is responsible for preparation, review, and presentation of Department budget estimates; liaison with the Office of Management and Budget and Congressional Budget and Appropriations Committees; preparation of the Department's annual financial statements; departmental financial plans, apportionments, reapportionments, reprogrammings, and allotments; program and systems evaluation and analysis; program evaluation criteria; program resource plans; analysis and review of legislative proposals and one-time reports and studies required by Congress; and budget and financial management relating to the Office of the Secretary.

§ 1.34 Delegations to the Assistant Secretary for Budget and Programs and Chief Financial Officer.

The Assistant Secretary for Budget and Programs and CFO is delegated authority to:

(a) Serve as the Department's Chief Financial Officer pursuant to 31 U.S.C. 901 (Establishment of Agency Chief Financial Officers).

(b) Exercise day-to-day operating management responsibility over the Office of Budget and Program Performance, the Office of Financial

Management, and the Office of the CFO for the Office of the Secretary.

(c) Direct and manage the Departmental planning, evaluation, budget, financial management, and internal control activities.

(d) Exercise oversight and provide exclusive policy guidance to the Enterprise Services Center (ESC) regarding all financial management activities conducted by ESC and financial systems operated by ESC. This authority includes concurrence with any organizational changes within the Federal Aviation Administration that may affect financial management operations of the ESC.

(e) Request apportionment or reapportionment of funds by the Office of Management and Budget, provided that no request for apportionment or reapportionment which anticipates the need for a supplemental appropriation shall be submitted to the Office of Management and Budget without appropriate certification by the Secretary.

(f) Issue allotments or allocations of funds to components of the Department.

(g) Authorize and approve official travel and transportation for staff members of the Immediate Office of the Secretary including authority to sign and approve related travel orders and travel vouchers, but not including requests for overseas travel.

(h) Issue monetary authorizations for use of reception and representation funds.

(i) Act for the Secretary and Deputy Secretary with respect to certain budgetary and administrative matters relating to the Immediate Office of the Secretary.

(j) Exercise the Secretary's authority under 31 U.S.C. 3711 to collect, compromise, suspend collection action on, or terminate claims of the United States not exceeding \$100,000 (excluding interest) which are referred to, or arise out of the activities of, the Office of the Secretary (excluding claims pertaining to the Working Capital Fund).

(k) Exercise the Secretary's authority under the Improper Payments Elimination and Recovery Act of 2010 (Pub. L. 111–204) (33 U.S.C. 3301 note).

(l) Exercise the Secretary's authority under the Improper Payments Information Act of 2002 (Pub. L. 107–300) (31 U.S.C. 3321 note).

(m) Exercise the Secretary's authority under the Recovery Auditing Act (Section 831, Defense Authorization Act for FY 2002 (Pub. L. 107–107).

(n) Exercise the Secretary's authority under the Federal Financial

Management Improvement Act of 1996 (31 U.S.C. 3512 note).

(o) Exercise the Secretary's authority under Federal Managers' Financial Integrity Act of 1982 (FMFIA) (31 U.S.C. 3512 note).

(p) Exercise the Secretary's authority under the Accounting and Auditing Act of 1950 (31 U.S.C. 3512), as amended by FMFIA.

(q) Exercise the Secretary's authority under the Government Performance and Results Act (GPRA) (Pub. L. 103–623) (1993).

(r) Exercise the Secretary's authority under the Accountability of Tax Dollars Act of 2002, 31 U.S.C. 3515.

(s) Exercise the Secretary's authority under the Government Management Reform Act of 1994 (GMRA) (Pub. L. 103–356).

§ 1.35 Assistant Secretary for Governmental Affairs.

The Assistant Secretary for Governmental Affairs serves as the Department's primary point of contact for Congressional offices, as well as State and locally elected officials; works with other departmental offices to ensure that Congressional mandates are fully implemented by the Department; and works with the White House, other Federal agencies, and Congress to fulfill the Department's legislative priorities. The Assistant Secretary coordinates congressional and intergovernmental activities with governmental affairs offices in the Operating Administrations. The Assistant Secretary participates with each Administrator in the performance reviews of the Operating Administrations' Directors of Governmental Affairs. The Assistant Secretary supervises the Deputy Assistant Secretary for Tribal Government Affairs who plans and coordinates the Department's policies and programs with respect to Indian tribes and tribal organizations.

§ 1.36 Delegations to the Assistant Secretary for Governmental Affairs.

The Assistant Secretary for Governmental Affairs is delegated authority to:

(a) Establish procedures for responding to Congressional correspondence; and

(b) Supervise the Deputy Assistant Secretary for Tribal Government Affairs.

§ 1.37 Assistant Secretary for Administration.

The Assistant Secretary for Administration is the principal advisor to the Secretary and Deputy Secretary on Department-wide administrative matters. The Assistant Secretary for

Administration serves as the Designated Agency Safety and Health Official. The Office of the Assistant Secretary for Administration's responsibilities include: strategic management of human capital; monitoring the progress of departmental offices related to sustainability goals; controls and standards to ensure that procurement and financial assistance programs are in accord with good business practice; follow-up and resolution of Government Accountability Office and Inspector General audit reviews; information resource management; property management information; facilities; and security. The Assistant Secretary for Administration is responsible for recommending performance objectives for the Operating Administrations' Directors of Human Resources.

§ 1.38 Delegations to the Assistant Secretary for Administration.

The Assistant Secretary for Administration is delegated authority for the following:

- (a) *Acquisition.* (1) Exercise procurement authority with respect to requirements of the Office of the Secretary.
- (2) Make the required determinations with respect to mistakes in bids relative to sales of personal property conducted by the Office of the Secretary without power of redelegation.
- (3) Carry out the functions vested in the Secretary by sections 3 and 4(b) (as appropriate) of Executive Order 11912 (energy conservation).
- (4) Carry out the functions delegated to the Secretary from time to time by the Administrator of General Services to lease real property for Department use.
- (5) Carry out the duties and responsibilities of agency head for departmental procurement within the meaning of the Federal Acquisition Regulation. This authority as agency head for departmental procurement excludes duties, responsibilities, and powers expressly reserved for the Secretary of Transportation.
- (6) Serve as Deputy Chief Acquisition Officer.
- (7) Provide departmental guidance on grants, cooperative agreements, loans, and other transactions.
- (b) *Personnel.* (1) Conduct a personnel management program for the Office of the Secretary of Transportation, with authority to take, direct others to take, recommend or approve any personnel action with respect to such authority.
- (2) Serve as Vice Chairman of the Departmental Executive Resources Board.
- (3) Exercise emergency authority to hire without the prior approval of the

Deputy Secretary normally required by departmental procedures implementing general employment limitations when in the judgment of the Assistant Secretary immediate action is necessary to effect the hire and avoid the loss of a well-qualified job applicant, and for similar reasons.

(4) Review proposals of the Office of the Secretary for each new appointment or transfer to verify the essentiality of the position.

(5) Approve employment of experts and consultants in accordance with 5 U.S.C. 3109.

(6) Provide policy and overall direction in the execution of the DOT Labor-Management Relations Program, including issuing final interpretations for the Department and its Operating Administrations on matters arising under section 7117 of title VII of the Civil Service Reform Act of 1978.

(7) Develop and operate the Federal Employee Workplace Drug and Alcohol Testing Program in accordance with Executive Order 12564 and The Omnibus Transportation Employee Testing Act of 1991, Public Law 102–143, Title V.

(8) Serve as the Chief Human Capital Officer:

(i) Oversee, direct, and execute all authorities included in the Chief Human Capital Officers Act of 2002 (5 U.S.C. 1401 *et seq.*); and

(ii) Advise the Secretary on the Department's human capital needs and obligations, and to implement all related rules and regulations of the President and the Office of Personnel Management, and all laws government human resource management as delineated in the Federal Workforce Improvement Act of 2002.

(c) *Sustainability.* Responsible for ensuring that the Department meets its sustainability goals pursuant to the Energy Independence and Security Act (EISA) of 2007 (Pub. L. 110–140); the Energy Policy Act of 2005 (Pub. L. 109–58); E.O. 13514 (Federal Leadership in Environmental, Energy, and Economic Performance); and E.O. 14323 (Strengthening Federal Environmental, Energy, and Transportation Management).

(d) *Finance.* (1) Administer the financial and fiscal affairs of the Office of the Secretary (other than those for which the Assistant Secretary for Budget and Programs and CFO is responsible), in accordance with 31 U.S.C. 3512.

(2) Settle and pay claims by employees of the Office of the Secretary for personal property losses, as provided by 31 U.S.C. 241(b).

(3) Waive claims and make refunds in connection with claims of the United States for erroneous Working Capital Fund (WCF) payments of pay and allowances or of travel, transportation, and relocation expenses and allowances to a WCF employee of the Office of the Secretary in amounts aggregating not more than \$1,500 without regard to any repayments, and deny requests for waiver of such claims regardless of the aggregate amount of the claim, as provided by 4 CFR parts 91, 92, and 93. This authority may be redelegated only to the Director of Financial Management.

(4) Compromise, suspend collection action on, or terminate claims of the United States not exceeding \$100,000 (excluding interest) which are referred to, or arise out of the activities of, the Working Capital Fund.

(5) Oversee the Working Capital Fund for the Office of the Secretary, established by 49 U.S.C. 327.

(6) Oversee a mass transportation and vanpool transportation fringe benefit program under Executive Order 13150.

(e) *Special funds.* Except as otherwise delegated, establish or operate, or both, such special funds as may be required by statute or by administrative determination. This excludes the Working Capital Fund (49 U.S.C. 327).

(f) *Security.* (1) Serves as the agency representative appointed by the Secretary of Transportation to participate on the Interagency Security Committee in accordance with Executive Order 12977, to establish policies for the security in and protection of Federal facilities.

(2) Represents the department on the White House Communications Agency Principal Communications Working Group and the Department of State Overseas Security Policy Board.

(3) Conducts an internal security management program for the Department of Transportation with authority to take, direct others to take, recommend, or approve security actions with respect to such authorities related to personnel security, physical security, technical security, and classified and sensitive information management.

(4) Issues identification media as directed by Homeland Security Presidential Directive 12, "Policy for Common Identification Standard for Federal Employees and Contractors" and other identification media (including credentials, passports and visas) by direction of the Secretary.

(5) Manages the Department's classified information program as directed by Executive Order 13526, "Classified National Security Information."

(6) Takes certain classified actions on behalf of the Department in connection with technical counter-surveillance programs as required by Executive Order 13526, "Classified National Security Information."

(7) In conjunction with the Office of Security, Intelligence and Emergency Response, and the Office of the General Counsel, carries out the functions vested in the Secretary by 49 U.S.C. 40119(b), as implemented by 49 CFR part 15, related to the protection of information designated as Sensitive Security Information.

(8) Ensure Department-wide compliance with Executive Orders 12968 as amended, 13467, 13488, 13526, 13556, and related regulations and issuances.

(g) *Printing.* (1) Request approval of the Joint Committee on Printing, Congress of the United States, for any procurement or other action requiring Committee approval.

(2) Certify the necessity for departmental periodicals and request approval of the Director of the Office of Management and Budget (OMB Circular No. A-3 Revised as of Sept. 8, 1960).

(h) *Building management.* Carry out the functions vested in the Secretary by sections 1(c) and 4(b) (as appropriate) of Executive Order 11912 (energy conservation).

(i) *Hearings.* Provide logistical and administrative support to the Department's Office of Hearings.

(j) *Federal real property management.* Carry out the functions assigned to the Secretary with respect to Executive Order 13327, as amended.

(k) *The Uniform Act.* Carry out the functions, powers, and duties of the Secretary to implement the Uniform Act (42 U.S.C. Chapter 61) with respect to programs administered by the Office of the Secretary. This authority is subject to the requirements listed in § 1.81 that govern all Operating Administrations' authority with respect to the Uniform Act.

(l) *Regulations.* Issue Departmental procurement regulations, subject to coordination with the General Counsel and interested Operating Administrations. In commenting upon proposed provisions for the procurement regulations, the Operating Administrations will indicate the nature and purpose of any additional implementing or supplementing policy guidance which they propose to issue at the Operating Administration level.

(m) *Designated Agency Safety and Health Official.* Serve as the Designated Agency Safety and Health Official under 29 CFR 1900.6(a) to represent the interest of, and support, the

Department's occupational safety and health program.

(n) *Senior Real Property Officer.* Serve as the Senior Real Property Officer for the Department pursuant to Executive Order 13327, Federal Real Property Asset Management (as amended), and chair the Departmental Real Property Planning Council.

(o) *Telework Managing Officer.* Serve as the Telework Managing Officer pursuant to 5 U.S.C. 6505.

§ 1.38a Redelegations by the Assistant Secretary for Administration.

(a) The Director, Office of the Senior Procurement Executive is redelegated the authority to:

(1) Carry out the duties and responsibilities of agency head for departmental procurement within the meaning of the Federal Acquisition Regulation except for those duties expressly reserved for the Secretary of Transportation.

(2) Carry out the functions of the Chief Acquisition Officer (CAO) except for those functions specifically reserved for the Deputy Secretary. In carrying out these functions and in support of requirements under Services Acquisition Reform Act (SARA), enacted as part of the National Defense Authorization Act for 2004—Public Law 108-136, the Senior Procurement Executive (SPE) is expected to interact directly, and without intervening authority, with the CAO on issues related to strategic acquisition policy, implementation, and management. The nature and frequency of interactions with the CAO will be determined mutually between the SPE and the CAO.

(3) Procure and authorize payment for property and services for the Office of the Secretary, with power to re-delegate and authorize successive re-delegations.

(b) The Director of Human Resources Management is redelegated the authority to:

(1) Develop and oversee human resource policies for the Department of Transportation, including concurrence in the appointment and promotion of all HR Directors in each Operating Administration and participation with each Administrator in the performance reviews of HR Directors.

(2) Conduct a personnel management program for the Office of the Secretary with authority to take, direct others to take, recommend or approve any personnel action with respect to such authority.

(3) Develop, coordinate, and issue wage schedules for Department employees under the Federal Wage System.

(c) The Director of Financial Management is redelegated the authority to:

(1) Designate to the Treasury Department certifying officers and designated agents for the Office of the Secretary and imprest fund cashiers for the Departmental Headquarters.

(2) Certify to the validity of obligations as required by 31 U.S.C. 200 and to the adequacy of bond coverage for the designations under section 160(c)(2).

(3) Sign reports on Budget Execution as required by OMB Circular A-34 (Revised).

(4) Review and approve for payment any voucher for \$25 or less the authority for payment of which is questioned by a certifying or disbursing officer.

(5) Process essential air service payments.

(6) Approve claims of WCF employees allowable under 31 U.S.C. 3721 for amounts of \$500 or less.

§ 1.39 Executive Secretariat.

The Executive Secretariat provides organized staff services to the Secretary and Deputy Secretary to assist them in carrying out their management functions and their responsibilities for formulating, coordinating and communicating major policy decisions. The Office controls and coordinates internal and external material directed to the Secretary and Deputy Secretary and ensures that their decisions and instructions are implemented.

§ 1.40 Departmental Office of Civil Rights.

The Departmental Office of Civil Rights serves as the Department's Equal Employment Opportunity (EEO) Officer and Title VI Coordinator. The Director also serves as principal advisor to the Secretary and the Deputy Secretary on the civil rights and nondiscrimination statutes, regulations, and Executive Orders applicable to the Department, including titles VI and VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Age Discrimination Act of 1975, as amended, section 504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, the Equal Pay Act of 1963, the ADA Amendments Act of 2008, and the Genetic Information Nondiscrimination Act of 2008. The Departmental Office of Civil Rights provides guidance to the Operating Administrations and Secretarial officers on these matters. The Office periodically reviews and evaluates the civil rights programs of the Operating Administrations to ensure that recipients of financial assistance

meet applicable Federal civil rights requirements.

§ 1.41 Delegations to the Director of the Departmental Office of Civil Rights.

The Director of the Departmental Office of Civil Rights is delegated authority to conduct all stages of the formal employment discrimination complaints process (including acceptance/dismissal, investigation, and final adjudication); to provide guidance to the Operating Administrations and Secretarial officers concerning the implementation and enforcement of all civil rights laws, regulations and Executive Orders for which the Department is responsible; to otherwise perform activities to ensure compliance with external civil rights programs; and to review and evaluate the Operating Administrations' enforcement of these authorities. These authorities include:

(a) Title VI and VII of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* and 2000e *et seq.*

(b) Sections 501 and 504 of the Rehabilitation Act of 1973, 29 U.S.C. 791 and 794–794a.

(c) Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.*

(d) Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*

(e) Americans with Disabilities Act of 1990, 42 U.S.C. 12101–121213.

(f) ADA Amendments Act of 2008 (Pub. L. 110–325) [42 U.S.C. 12101 Note].

(g) Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. 2000ff *et seq.*

(h) Equal Pay Act of 1963, 29 U.S.C. 206(d).

(i) Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act (Pub. L. 102–321)

(j) Chapter XIV of Subtitle B, of Title 29 of the CFR (Equal Employment Opportunity Commission Regulations).

(k) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90–284) [42 U.S.C. 3601 *et seq.*].

(l) 40 U.S.C. 476 (prohibition on sex discrimination).

(m) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681.

(n) In coordination with the Assistant Secretary for Transportation Policy, Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (See also E.O. 12948).

(o) 49 U.S.C. 306 (prohibition on discrimination in programs receiving financial assistance), 5310 (transportation for elderly persons and persons with disabilities), 5332

(nondiscrimination in mass transportation), 41705 (discrimination by air carriers against handicapped persons), 47113 (minority and disadvantaged business participation), and 47123 (nondiscrimination in airport improvement programs).

(p) 23 U.S.C. 140, 324, and 402(b)(1)(D) (nondiscrimination in highway programs).

(q) The Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102–240, 105 Stat. 1919, section 1003.

§ 1.42. Office of Small and Disadvantaged Business Utilization.

The Director of the Office of Small and Disadvantaged Business Utilization ensures that the Department's small and disadvantaged business policies and programs are developed in a fair, efficient, and effective manner. The Office is responsible for the Department's implementation and execution of the functions and duties under the Small Business Act, and providing opportunities, technical assistance, and financial services to the small and disadvantaged business community.

§ 1.43 Delegations to the Director of the Office of Small and Disadvantaged Business Utilization.

The Director of Small and Disadvantaged Business Utilization is delegated authority to:

(a) Exercise departmental responsibility for the implementation and execution of functions and duties under sections 2[8] and 2[15] of the Small Business Act (Public Law 85–836) [15 U.S.C. 637 and 644].

(b) Carry out the functions vested in the Secretary by 49 U.S.C. 332 (Minority Resource Center).

§ 1.44 Office of Intelligence, Security and Emergency Response.

The Director of the Office of Intelligence, Security and Emergency Response is responsible for the development, coordination, and execution of plans and procedures for the Department to balance transportation security requirements with the safety, mobility and economic needs of the Nation through effective intelligence, security, preparedness and emergency response programs. The Director is the Department's principal Emergency Coordinator for the implementation of these programs.

§ 1.45 Delegations to the Director of the Office of Intelligence, Security and Emergency Response.

The Director of Intelligence, Security, and Emergency Response is delegated authority to:

(a) Carry out the functions related to emergency preparedness and response vested in the Secretary by the following authorities: 49 U.S.C. 101 and 301; the Defense Production Act of 1950, 50 U.S.C. App. 2061 *et seq.*, as such authorities are delegated to the Department under Executive Order 13603, *National Defense Resource Preparedness*; Executive Order 12148, as amended, *Federal Emergency Management*; Executive Order 12656, *Assignment of Emergency Preparedness Responsibilities* (as amended; see E.O. 13286); Executive Order 12742, *National Security Industrial Responsiveness*; Executive Order 13434, *National Security Professional Development*; Reorganization Plan No. 3 of 1978; and such other statutes, executive orders, and other directives as may pertain to emergency preparedness and response.

(b) Serve as the Department's Continuity Coordinator in accordance with National Security Presidential Directive 51/Homeland Security Presidential Directive 20, *National Continuity Policy*, and Federal Continuity Directives (FCD) 1 *Federal Executive Branch National Continuity Program and Requirements* and FCD 2 *Federal Executive Branch Mission Essential Function and Primary Mission Essential Function Identification and Submission Process*. Provide leadership for departmental programs pertaining to intelligence related to the transportation sector, transportation security policy, and civil transportation emergency preparedness and response activities.

(c) Lead departmental collaboration efforts with the Department of Homeland Security and other Departments and Agencies related to transportation security and transportation infrastructure protection as required by Homeland Security Presidential Directive 7, *Critical Infrastructure Identification, Prioritization, and Protection*.

(d) Together with the Assistant Secretary for Administration, carry out oversight and management of the duties pertaining to national security professional development assigned to the Secretary under Executive Order 13434, *National Security Professional Development*.

(e) Together with the Office of the Assistant Secretary for Aviation and International Affairs, coordinate the Department's responsibilities under

National Security Presidential Directive 44, *Management of Interagency Efforts Concerning Reconstruction and Stabilization*, and Presidential Decision Directive 56, *Managing Complex Contingency Operations*, pertaining to interagency reconstruction and stabilization assistance.

(f) Lead departmental efforts pertaining to transportation-related international civil emergency preparedness activities, including coordinating DOT representation on North Atlantic Treaty Organization committees, as directed under Executive Order 12656 (as amended; see E.O. 13286).

(g) Carry out the functions vested in the Secretary by 49 U.S.C 40119(b), as implemented by 49 CFR part 15, related to the designation of information as Sensitive Security Information.

(h) Oversee the Department's protective service program.

(i) Serve as the Secretary's representative to the Transportation Security Oversight Board, in accordance with 49 U.S.C 115, when so designated.

(j) Lead Departmental participation in internal and interagency planning efforts related to preparedness in accordance with Presidential Policy Directive 8, National Preparedness.

(k) Serve as the Secretary's senior advisor on matters pertaining to public health, biological, and medical matters.

(l) Develop departmental plans to support the Department of Defense Civil Reserve Air Fleet (CRAF) program and allocate civil air carrier aircraft to CRAF based on Department of Defense requirements.

(m) Oversee operation of the Department's Crisis Management Center.

(n) Lead departmental efforts for all interaction with the Program Manager, Information Sharing Environment to include appointing the Associate Director for Intelligence as the DOT Information Sharing Program Manager to coordinate day-to-day Information Sharing Environment matters.

(o) Carry out departmental responsibilities under Executive Order 13587, *Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information*, including overseeing classified information sharing and safeguarding efforts for DOT. Oversee the day-to-day activities for monitoring the Top Secret and Secret classified network used by DOT.

(p) Serve as the department's program manager responsible for oversight of all intelligence programs, to include the DOT Counterintelligence effort as it

pertains to the DOT classified networks, and coordinate intelligence matters throughout the department. Nothing in this provision is intended to prohibit or limit a component's ability to conduct intelligence activities authorized by law.

§ 1.46 Office of Public Affairs.

The Director of Public Affairs is the principal advisor to the Secretary and Secretarial Officers on public affairs issues. The Office of Public Affairs prepares news releases and supporting media materials, and maintains a new media presence. The Office also provides information to the Secretary on opinions and reactions of the public and news media on programs and transportation issues. The Office of Public Affairs is responsible for the supervision, coordination, and review of the activities of the public affairs offices within the Operating Administrations.

§ 1.47 Delegations to the Assistant to the Secretary and Director of Public Affairs.

The Assistant to the Secretary and Director of Public Affairs is delegated authority to:

(a) Monitor the overall public information program and review and approve departmental informational materials having policy-making ramifications before they are printed and disseminated.

(b) Carry out the functions to promote carpooling and vanpooling transferred to the Department of Transportation by section 310 of the Department of Energy Organization Act of 1977 (Pub. L. 95-91) [42 U.S.C. 7159].

§ 1.48 Office of the Chief Information Officer.

The Chief Information Officer (CIO) is the principal information technology (IT), cyber security, privacy, and records management advisor to the Secretary. The Office of the CIO supports the Organizational Excellence Strategic Goal by providing leadership on all matters associated with the Department's \$3.5 billion IT portfolio.

§ 1.49 Delegations to the Chief Information Officer.

The Chief Information Officer is delegated authority to carry out all functions and responsibilities:

(a) Assigned to the Secretary with respect to the Paperwork Reduction Act of 1995 (44 U.S.C. 3506);

(b) Assigned to the Secretary with respect to the Clinger-Cohen Act of 1996 (40 U.S.C. 11312 to 11314, and 11317);

(c) Assigned to the Secretary with respect to the E-Government Act of 2002, Public Law 107-347;

(d) Necessary to ensure compliance with the Federal Information Security

Management Act of 2002 (44 U.S.C. 3534 and 3544);

(e) To serve as the Chief Privacy Officer under the Privacy Act, 5 U.S.C. 552a (note; see Pub. L. 108-447) and to administer the Privacy Act and 49 CFR part 10 (Maintenance of and Access to Records Pertaining to Individuals) in connection with the records of the Office of the Secretary;

(f) Necessary to issue notices of Department of Transportation systems of records as required by the Privacy Act; and

(g) Assigned to the Secretary with respect to the Federal Records Act (44 U.S.C. 3101-3102) and necessary to ensure compliance with the regulations of the National Archives and Records Administration (36 CFR 1220 *et seq.*; 44 U.S.C. Chapters 21, 29, 31, and 33), in coordination with the General Counsel.

§ 1.50 Office of Drug & Alcohol Policy & Compliance.

The Office of Drug & Alcohol Policy & Compliance advises the Secretary on national and international drug testing and control issues and is the principal advisor to the Secretary on rules related to the drug and alcohol testing of safety-sensitive transportation employees in aviation, trucking, railroads, mass transit, pipelines, and other transportation industries. The Office, in coordination with the Office of the General Counsel, publishes and provides interpretations of rules related to 49 CFR Part 40 on the conduct of drug and alcohol tests, including how to conduct tests, and which procedures to use when testing. The Office coordinates with Federal Agencies and assists foreign governments in developing drug and alcohol testing programs and implementing the President's National Drug Control Strategy.

§ 1.60 General Authorizations and Delegations to Secretarial Officers.

(a) Acting in his or her own name and title, the Under Secretary, the General Counsel, and each Assistant Secretary, within his or her sphere of responsibility, is authorized to identify and define the requirements for, and to recommend to the Secretary, new or revised departmental policies, plans, and proposals. Each of these officers is authorized to issue departmental standards, criteria, systems and procedures that are consistent with applicable laws, Executive Orders, Government-wide regulations and policies established by the Secretary, and to inspect, review, and evaluate departmental program performance and

effectiveness and advise the Secretary regarding the adequacy thereof.

(b) Except for nondelegable statutory duties including those that transfer as a result of succession to act as Secretary of Transportation, each Deputy Assistant Secretary and Deputy General Counsel is authorized to act for and perform the duties of his or her principal in the absence or disability of the principal and as otherwise directed by the principal.

(c) The Deputy Secretary, the Under Secretary, the General Counsel, and the Assistant Secretaries for Administration, Budget and Programs, and Governmental Affairs are delegated authority to:

(1) Redelegate and authorize successive redelegations of authority granted by the Secretary within their respective organizations, except as limited by law or specific administrative reservation, including authority to publish those redelegations in appendix A of this part.

(2) Authorize and approve official travel (except foreign travel) and transportation for themselves, their subordinates, and others performing services for, or in cooperation with, the Office of the Secretary.

(3) Establish ad hoc committees for specific tasks within their assigned staff area.

(4) Establish, modify, extend, or terminate standing committees within their specific areas of responsibility when directed or authorized to do so by the Secretary.

(5) Designate members of interagency committees when such committees are specifically concerned with responsibilities of direct interest to their office.

(6) Exercise the following authorities with respect to positions in the Senior Executive Service and Senior Level within their respective areas of responsibility:

(i) Determine how executive level positions will be filled; i.e., by reassignment, promotion, or appointment.

(ii) Establish selection criteria to be used in identifying eligible candidates.

(iii) Confer with the Administrators on selection criteria and candidates for an executive level position that is a counterpart of an activity or position in the Office of the Secretary.

(iv) Recommend final selection for executive level positions, subject to review by the Executive Committee of the Departmental Executive Resources Board and approval by the Secretary and the Office of Personnel Management.

(7) Enter into inter- and intra-departmental reimbursable agreements other than with the head of another department or agency (31 U.S.C. 686). This authority may be redelegated only to office directors or other comparable levels and to contracting officers.

(8) Administer and perform the functions described in their respective functional statements.

(9) Exercise the authority of the Secretary to make certifications, findings and determinations under the Regulatory Flexibility Act (Pub. L. 96–354) with regard to any rulemaking document for which issuance authority is delegated by other sections in this part. This authority may be redelegated to those officials to whom document issuance authority has been redelegated.

(10) Exercise the authority of the Secretary to resolve informal allegations of discrimination arising in or relating to their respective organizations through Equal Employment Opportunity counseling or the Alternative Dispute Resolution process and to develop and implement affirmative action and diversity plans within their respective organizations.

(11) Exercise the authority vested in the Secretary by 49 U.S.C. 326(a) and 31 U.S.C. 1353 to accept, in an amount not exceeding \$1,000 in value and subject to the concurrence of the Designated Agency Ethics Official, the following: gifts of property (other than real property), gifts of services (in carrying out aviation duties and powers) or reimbursement of travel expenses from non-federal sources. Acceptance of such gifts or travel reimbursement exceeding \$1,000 in value or those that are otherwise significant may only take place with the additional concurrence of the General Counsel. This delegation extends only to the acceptance of gifts or travel expenses and does not authorize the solicitation of gifts, which is reserved to the Secretary at 49 CFR 1.21.

Subpart C—Office of Inspector General

§ 1.70 Overview.

This subpart describes the key responsibilities of the Office of Inspector General, the structure of the office, and the authority of the Inspector General.

§ 1.71 Key responsibilities.

The Inspector General conducts, supervises, and coordinates audits and investigations; reviews existing and proposed legislation and makes recommendations to the Secretary and Congress concerning their effect on the economy and efficiency of program

administration, or the prevention and detection of fraud and abuse; recommends policies for and conducts, supervises, or coordinates other activities of the Department for the purpose of promoting economy and efficiency in program administration, or preventing and detecting fraud and abuse; and keeps the Secretary and the Congress fully and currently informed.

§ 1.72 Structure.

This Office is composed of:

(a) The Office of the Deputy Inspector General;

(b) The Office of the Principal Inspector General for Investigations;

(c) The Office of the Principal Inspector General for Auditing and Evaluation;

(d) The Office of the Assistant Inspector General for Administration;

(e) The Office of the Assistant Inspector General for Legal, Legislative and External Affairs;

(f) The Office of the Assistant Inspector General for Aviation and Special Programs;

(g) The Office of the Assistant Inspector General for Financial and Information Technology Audits;

(h) The Office of the Assistant Inspector General for Highway and Transit Audits;

(i) The Office of the Assistant Inspector General for Rail, Maritime and Economic Analysis; and

(j) The Office of the Assistant Inspector General for Acquisition and Procurement Audits.

§ 1.73 Authority of Inspector General.

The Inspector General shall report to and be under the general supervision of the Secretary and Deputy Secretary. The Inspector General has such authority as is provided by the Inspector General Act of 1978, as amended, and as is otherwise provided by law. Authorities provided to the Inspector General by law are reserved to the Inspector General. In accordance with the statutory intent of the Inspector General Act to create an independent and objective unit, the Inspector General is authorized to make such investigations and reports relating to the administration of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary and desirable. Neither the Secretary nor the Deputy Secretary shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

§ 1.74 Delegations to Inspector General.

The Inspector General is delegated authority to:

(a) Redelegate and authorize successive redelegations of authority granted by the Secretary within the Office of Inspector General, except as limited by law or specific administrative reservation.

(b) Authorize and approve official travel, including foreign travel and transportation for themselves, their subordinates, and others performing services for, or in cooperation with, the Office of the Secretary.

(c) Exercise the authority of the Secretary to resolve informal allegations of discrimination arising in or relating to the Inspector General through Equal Employment Opportunity counseling or the Alternative Dispute Resolution process and to develop and implement affirmative action and diversity plans.

(d) Exercise the authority vested in the Secretary by 49 U.S.C. 326(a) to accept gifts of property (other than real property) or services (in carrying out aviation duties and powers), and the authority to accept travel reimbursements from non-federal sources under 31 U.S.C. 1353.

(e) The implied authority to solicit gifts associated with 49 U.S.C. 326(a), notwithstanding the reservation of authority to the Secretary in section 1.21.

(f) Carry out the emergency preparedness functions assigned to the Secretary by Executive Order 12656 (as amended; see E.O. 13286) and by the Federal Emergency Management Agency and General Services Administration (FEMA and GSA) as they pertain to the Office of Inspector General, including those relating to continuity of operations, emergency resource management, and training.

(g) Determine the existence and amount of indebtedness and the method of collecting repayments from employees and members within the Office of Inspector General and collect repayments accordingly, as provided by 5 U.S.C. 5514.

(h) Waive claims and make refunds in connection with claims of the United States for erroneous payment of pay and allowances or of travel, transportation, and relocation expenses and allowances in amounts aggregating not more than \$1,500 without regard to any repayments, and deny requests for waiver of such claims regardless of the aggregate amount of the claim, as provided by 4 CFR parts 91, 92, and 93.

(i) Settle and pay claims by employees for personal property losses as provided by 31 U.S.C. 3721 (Claims of personnel of agencies and the District of Columbia

government for personal property damage or loss).

(j) Review and approve for payment any voucher for \$25 or less the authority for payment of which is questioned by a certifying or disbursing officer.

(k) Request the Attorney General, after the concurrence of the General Counsel, to approve the award, compromise, or settlement of any tort claim for an amount exceeding \$100,000 (excluding interest) (28 U.S.C. 2672).

(l) Compromise, suspend collection action on, or terminate claims of the United States not exceeding \$100,000 (excluding interest) that are referred to, or arise out of the activities of the Office of Inspector General.

(m) Compromise, suspend collection action on, or terminate tort claims against the United States not exceeding \$100,000 (excluding interest) that are referred to, or arise out of the activities of the Office of Inspector General provided that when the Inspector General believes that a claim against the United States presents a novel question of law or of policy, he or she shall coordinate with the General Counsel to obtain the advice of the Assistant Attorney General in charge of the Civil Division; and provided further that whenever he or she settles any administrative claim against the United States for an amount in excess of \$50,000, the Inspector General shall prepare a memorandum fully explaining the basis for the action taken and coordinate with the General Counsel before sending a copy of the memorandum to the Director, Federal Torts Claims Act Staff, Torts Branch of the Civil Division, U.S. Department of Justice.

(n) Make written requests under subsection (b)(7) of the Privacy Act, 5 U.S.C. 552a(b)(7), for records maintained by other agencies that are necessary to carry out an authorized law enforcement activity.

Subpart D—Operating Administrations**§ 1.80 Overview.**

This subpart sets forth the key responsibilities of the Operating Administrations, and the delegations of authority from the Secretary of Transportation to the Administrators.

§ 1.81 Delegations to all Administrators.

(a) Except as prescribed by the Secretary of Transportation, each Administrator is authorized to:

(1) Exercise the authority of the Secretary over and with respect to any personnel within their respective organizations.

(2) Exercise the authority of the Secretary as executive head of a

department, under any statute, Executive Order or regulation.

(3) Exercise the authority vested in the Secretary to prescribe regulations under 49 U.S.C. 322(a) with respect to statutory provisions for which authority is delegated by other sections in this part.

(4) Carry out the functions of the Secretary concerning environmental enhancement by 49 U.S.C. 303 (Duties of the Secretary of Transportation: Policy on lands, wildlife and waterfowl refuges, and historic sites) and 23 U.S.C. 138 as they relate to matters within the primary responsibility of each Operating Administration.

(5) Carry out the functions of the Secretary under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)), and related environmental laws as they relate to matters within the primary responsibility of each Operating Administration.

(6) Carry out the functions of the Secretary under section 106 of the Historic Preservation Act of 1966, 16 U.S.C. 470f, as they relate to matters within the primary responsibility of each Operating Administration.

(7) Administer FOIA and 49 CFR part 7 (Public Availability of Information) in connection with the records of the Operating Administration.

(8) Administer the Privacy Act, 5 U.S.C. 552a and 49 CFR part 10 (Maintenance of and Access to Records Pertaining to Individuals) in connection with the records of the Operating Administration.

(9) Make written requests under subsection (b)(7) of the Privacy Act for records maintained by other agencies that are necessary to carry out an authorized law enforcement activity.

(10) Carry out the emergency preparedness functions assigned to the Secretary by Executive Order 12656, (as amended; see E.O. 13286) and by the Federal Emergency Management Agency and General Services Administration (FEMA and GSA) as they pertain to his or her administration, including those relating to continuity of operations, emergency resource management, associated Federal claimant procedures, facilities protection and warfare effects monitoring and reporting, research, stockpiling, financial aid, and training.

(11) Enter into inter- and intradepartmental reimbursable agreements other than with the head of another department or agency. This authority may be redelegated only to Office Directors, Regional Directors, District Commanders or other

comparable levels and Contracting Officers.

(12) Determine the existence and amount of indebtedness and the method of collecting repayments from employees within their respective administrations and collect repayments accordingly, as provided by 5 U.S.C. 5514. Redlegation of this authority may be made only to the principal officials responsible for financial management or such officials' principal assistants.

(13) Waive claims and make refunds in connection with claims of the United States for erroneous payment of pay and allowances or of travel, transportation, and relocation expenses and allowances in amounts aggregating not more than \$1,500 without regard to any repayments, and deny requests for waiver of such claims regardless of the aggregate amount of the claim, as provided by 4 CFR parts 91, 92, and 93. Redlegation of this authority may be made only to the level of Regional Director or Regional Administrator.

(14) Settle and pay claims by employees for personal property losses as provided by 31 U.S.C. 3721 (Claims of personnel of agencies and the District of Columbia government for personal property damage or loss). This authority may be redelegated only to Office Directors, Regional Directors, or other comparable levels and to those individuals that report to the above officials.

(15) Exercise the authority of the Secretary to resolve informal allegations of discrimination arising in or relating to their respective organizations through Equal Employment Opportunity counseling or the Alternative Dispute Resolution process and to develop and implement affirmative action and diversity plans within their respective organizations. With regard to external civil rights programs, each Administrator exercises authority pursuant to statutes, regulations, Executive Orders, or delegations in this subpart to carry out these programs, under the guidance of the Director of the Departmental Office of Civil Rights, including conducting compliance reviews and other activities relating to the enforcement of these statutes, regulations, and Executive Orders.

(16) Review and approve for payment any voucher for \$25 or less the authority for payment of which is questioned by a certifying or disbursing officer.

(17) Authorize and approve official non-foreign travel and transportation for themselves, their subordinates, and others performing services for, or in cooperation with, their Operating Administrations.

(18) Exercise the authority of the Secretary to make certifications, findings and determinations under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.* with regard to any rulemaking document for which issuance authority is delegated by other sections in this part. This authority may be redelegated to those officials to whom document issuance authority has been delegated.

(19) Carry out the functions vested in the Secretary by 15 U.S.C. 3710(a), which authorizes agencies to permit their laboratories to enter into cooperative research and development agreements.

(20) Request the Attorney General, after the concurrence of the General Counsel, to approve the award, compromise, or settlement of any tort claim for an amount exceeding \$100,000 (excluding interest) (28 U.S.C. 2672).

(21) Compromise, suspend collection action on, or terminate claims of the United States not exceeding \$100,000 (excluding interest) that are referred to, or arise out of the activities of, his or her Operating Administration.

(22) Compromise, suspend collection action on, or terminate claims against the United States under the Federal Tort Claims Act, not exceeding \$100,000 (excluding interest) that are referred to, or arise out of the activities of, his or her Operating Administration; provided that when the Administrator believes that a claim against the United States presents a novel question of law or of policy, he or she shall coordinate with the General Counsel to obtain the advice of the Assistant Attorney General in charge of the Civil Division; and provided further that whenever he or she settles any administrative claim against the United States for an amount in excess of \$50,000, the Administrator shall prepare a memorandum fully explaining the basis for the action taken and coordinate with the General Counsel before sending a copy of the memorandum to the Director, Federal Torts Claims Act Staff, Torts Branch of the Civil Division, U.S. Department of Justice.

(23) Enter into memoranda of agreement with the Occupational Safety and Health Administration (OSHA) in regard to setting and enforcing occupational safety or health standards and whistleblower protection for employees in DOT-regulated industries. The General Counsel shall concur in each memorandum of understanding with OSHA prior to its execution by the Administrator of the Operating Administration concerned.

(24) Enter into memoranda of agreement with the Mine Safety Health Administration (MSHA) in regard to setting and enforcing safety standards

for employees in DOT-regulated industries while on mine property. The General Counsel shall concur in each memorandum of agreement with MSHA prior to its execution by the Administrator of the Operating Administration concerned.

(25) Exercise the authority vested in the Secretary by Section 329A of the Department of Transportation and Related Agencies Appropriations Act, 1995, Public Law 103-331, 329A, 108 Stat. 2471, 2493 (September 30, 1994), to enter into grants, cooperative agreements, and other transactions with any person, agency, or instrumentality of the United States, any unit of state or local government, any educational institution, and any other entity in execution of the Technology Reinvestment Project authorized under the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992, Public Law 102-484, 106 Stat. 2658 (October 23, 1992), and related legislation.

(26) Carry out the functions vested in the Secretary by 49 U.S.C. 40119(b), as implemented by 49 CFR part 15, in coordination with the Office of the General Counsel and the Office of Intelligence, Security and Emergency Response, relating to the determination that information is Sensitive Security Information within their respective organizations.

(27) Exercise the authority vested in the Secretary by 49 U.S.C. 326(a) and 31 U.S.C. 1353 to accept, in an amount not exceeding \$1,000 in value and subject to the concurrence of the Operating Administration's Deputy Ethics Official, the following: Gifts of property (other than real property), gifts of services (in carrying out aviation duties and powers) or reimbursement of travel expenses from non-federal sources. Acceptance of such gifts or travel reimbursement exceeding \$1,000 in value or those that are otherwise significant may only take place with the additional concurrence of the General Counsel. This delegation extends only to the acceptance of gifts or travel expenses and does not authorize the solicitation of gifts, which is reserved to the Secretary at 49 CFR 1.21.

(28) Exercise the authority vested in the Secretary by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, 110 Stat. 1321), to promulgate rules that adjust civil penalties.

(29) Carry out the functions vested in the Secretary to implement the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Uniform Act),

42 U.S.C. Chapter 61, with respect to programs administered by their respective Operating Administrations. Each Operating Administration may prescribe additional Uniform Act guidance that is appropriate to those particular programs, provided that such additional guidance must be consistent with the Uniform Act and 49 CFR Part 24. The lead agency for Uniform Act matters is the Federal Highway Administration (see section 1.85 and 49 CFR Part 24).

§ 1.81a Redelegation by all Administrators.

Except as otherwise specifically provided in this Part, each Administrator may redelegate and authorize successive redelegations of authority within the organization under that official's jurisdiction.

§ 1.82 The Federal Aviation Administration.

Is responsible for:

(1) Promulgating and enforcing regulations on all safety matters relating to the operation of airports, the manufacture, operation, and maintenance of aircraft, and the efficiency of the National Airspace System;

(2) Planning and supporting the development of an integrated national system of airports, with due consideration of safety, capacity, efficiency, environmental compatibility and sustainability;

(3) Administering federal financial assistance programs for airports including airport grants-in-aid;

(4) Preserving and enhancing the safety and efficiency of the Nation's air transportation system by implementing NextGen and other technologies, as appropriate;

(5) Registering aircraft and recording rights in aircraft;

(6) Developing, modifying, testing, and evaluating systems, procedures, facilities, and devices needed for the safe and efficient navigation and traffic control of aircraft;

(7) Locating, constructing or installing, maintaining and operating Federal aids to air navigation, wherever necessary;

(8) Developing air traffic regulations, and administering air navigation services for control of civil and military air operations within U.S. airspace, as well as administering such air navigation services as the FAA has accepted responsibility for providing in international airspace and the airspace of foreign countries;

(9) Promoting aviation safety and efficiency through technical aviation assistance to foreign aviation authorities;

(10) Developing strategies to improve runway safety at all commercial service airports;

(11) Administering the Continuous Lower Energy, Emissions and Noise program, improving connections to surface transportation, and other efforts to increase the environmental sustainability of the Nation's air transportation systems;

(12) Conducting an effective airport technology research program to improve airport safety, efficiency, and sustainability;

(13) Exercising the final authority for carrying out all functions, powers, and duties of the Administration in accordance with 49 U.S.C. 106(f) and adjudication in accordance with 49 U.S.C. 40110(d) and that such authorities supersede any conflicting provisions elsewhere in this part.

(14) Promoting and encouraging U.S. leadership in commercial space activities, and promulgating and enforcing regulations on safety matters relating to commercial space transportation.

§ 1.83 Delegations to the Federal Aviation Administrator.

The Federal Aviation Administrator is delegated authority to:

(a) Carry out the following functions vested in the Secretary by 49 U.S.C. Subtitle VII (Aviation Programs):

(1) Sections 40103(a)(2), relating to the consultation with the Architectural and Transportation Barriers Compliance Board before prescribing regulations or procedures that will have a significant impact on accessibility of commercial airports or commercial air transportation for individuals with disabilities; 40109(c), but only as it relates to the regulation of 49 U.S.C. 46301(b) (smoke alarm device penalties), and 40109(e), relating to maximum flying hours 40113(a) as it relates to the functions vested in the Secretary and delegated in this section; 40114, relating to reports and records requirements; 40115, relating to withholding information from public disclosure; 40116, relating to the prohibition on State taxation as the prohibition may affect an airport sponsor's grant assurances; 40117, relating to passenger facility charges; 40119(b), relating to the issuance of regulations on disclosure of information obtained or developed in ensuring security; and 40127(b) of chapter 401, relating to prohibition on discrimination by private airports;

(2) Section 41723 of subchapter I of chapter 417, relating to notice concerning aircraft assembly;

(3) Section 44102(b) of chapter 441, relating to defining the term "based and primarily used in the United States";

(4) Chapter 443, relating to insurance;

(5) Chapter 445, relating to facilities, personnel, and research, except section 44502(a)(3) as it relates to authorizing a department, agency, or instrumentality of the United States Government to carry out any duty or power under subsection 44502(a) with the consent of the head of the department, agency, or instrumentality;

(6) Chapter 447, relating to safety regulation;

(7) Chapter 451, relating to alcohol and controlled substances testing;

(8) Subpart IV of Part A of 49 U.S.C. Subtitle VII (chapters 461–465) relating to the Secretary's authority to enforce and impose penalties under sections of Subtitle VII that have been delegated to the Federal Aviation Administrator in this section;

(9) Part B of 49 U.S.C. Subtitle VII (chapters 471–475) relating to airport development and noise;

(10) Part C of 49 U.S.C. Subtitle VII (chapters 481–483) relating to financing; and

(11) Part E of 49 U.S.C. Subtitle VII (chapter 501) relating to Buy-American Preferences.

(b) Carry out the functions vested in the Secretary by chapters 509 and 511 (commercial space) of title 51, U.S.C. and coordinate with the Assistant Secretary for Aviation and International Affairs regarding those functions related to the promotion of the aerospace industry.

(c) Carry out the functions vested in the Secretary by part B of title II of the Clean Air Act, as amended (84 Stat. 1703), and by 40 CFR part 87 as it relates to exemptions from aircraft air pollution standards.

(d)(1) Except as delegated to the Under Secretary of Transportation for Policy by § 1.25, carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b), (c), and (d), 5122, 5123, and 5124, relating to the transportation or shipment of hazardous materials by air.

(2) Carry out the functions vested in the Secretary by 49 U.S.C. 5114, relating to the establishment of procedures for monitoring and enforcing regulations with respect to the transportation of radioactive materials on passenger-carrying aircraft.

(e) Serve, or designate a representative to serve, as Vice Chairman and alternate Department of Transportation member of the Interagency Group on International Aviation (IGIA) pursuant to interagency agreement of December 9, 1960, and Executive Order 11382, and

provide for the administrative operation of the IGIA Secretariat.

(f) Carry out the functions assigned to the Secretary by Executive Order 12465 relating to commercial expendable launch vehicle activities.

(g) Carry out the functions vested in the Secretary by the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (Pub. L. 102–588, 106 Stat 5119, November 4, 1992).

§ 1.84 The Federal Highway Administration.

Is responsible for:

(a) Developing safety strategies using a data-driven, systematic approach to address safety for motorists, bicyclists, and pedestrians from engineering, education, enforcement, and emergency medical services perspectives and coordinating with FMCSA and NHTSA as appropriate.

(b) Planning, in cooperation with the States, the national highway system.

(c) Improving, in cooperation with the States (via the provision of grants), roads on the Federal-aid primary, secondary, and interstate highway systems and urban extensions thereof, to increase the percentage of highways in good condition.

(d) Identifying and deploying innovation aimed at shortening project delivery, enhancing the safety of our roadways, and protecting the environment.

(e) Surveying and constructing forest highway system roads, defense highways and access roads, and parkways and roads in national parks and other federally-administered areas.

(f) Developing and administering uniform State standards for highway safety programs with respect to identification and surveillance of accident locations; highway design, construction, and maintenance, including context sensitive solutions, highway-related aspects of pedestrian safety, and traffic control devices.

(g) Administering the Department's Highway Bridge Program to ensure the Nation has safe, well-maintained bridges for use by the traveling public.

(h) In coordination with NHTSA, RITA, and FMCSA, conducting vehicle-to-vehicle and vehicle-to-infrastructure research.

(i) Managing TIFIA funds, 23 U.S.C. 601–609, in conjunction with the TIFIA Joint Program Office, including managing accounting and budgeting activities, and procuring any necessary financial or technical support services for the TIFIA program.

(j) Maximizing the positive impacts on the U.S. economy by encouraging

domestic manufacturing on highway projects through the enforcement of Buy America provisions.

§ 1.85 Delegations to the Federal Highway Administrator.

(a) The Federal Highway Administrator is delegated authority to administer the following provisions of title 23, U.S.C. (Highways):

(1) Chapter 1, Federal-Aid Highways, except for sections 142 (as it relates to matters within the primary responsibility of the Federal Transit Administrator), 153, 154, 158, 159, 161, and 164.

(2) Chapter 2, Other Highways, except for section 205.

(3) Chapter 3, General Provisions, except for section 322.

(4) Section 409 of chapter 4, Highway Safety.

(5) Chapter 5, Research, Technology, and Education, except for sections 508 and 509.

(6) Chapter 6, Infrastructure Finance, subject to the limitations set forth in sections 1.33 (Assistant Secretary for Budget and Programs) and 1.21 (reservation to the Secretary of final approval of TIFIA credit assistance applications).

(b) The Federal Highway Administrator is delegated authority to administer the following provisions of title 49, U.S.C. (Transportation):

(1) Section 20134(a) with respect to the laws administered by the Federal Highway Administrator pertaining to highway safety and highway construction; and

(2) Sections 31111 and 31112 (as it relates to matters within the primary responsibility of the Federal Highway Administration).

(c) The Federal Highway Administrator is delegated authority to administer the following laws relating generally to highways:

(1) Section 502(c) of the General Bridge Act of 1946, as amended, 60 Stat. 847, [33 U.S.C. 525(c)].

(2) Reorganization Plan No. 7 of 1949 (63 Stat. 1070).

(3) The Federal-Aid Highway Act of 1954, as amended (Pub. L. 83–350, 68 Stat. 70).

(4) The Federal-Aid Highway Act of 1956, as amended (Pub. L. 84–627, 70 Stat. 374).

(5) The Highway Revenue Act of 1956, as amended (Pub. L. 84–627, 70 Stat. 374, 387, 23 U.S.C.A. 120 note).

(6) The Alaska Omnibus Act, as amended (Pub. L. 86–70, 73 Stat. 141, 48 U.S.C.A. 21 note.).

(7) The Act of September 26, 1961, as amended (Pub. L. 87–307, 75 Stat. 670).

(8) The Act of April 27, 1962 (Pub. L. 87–441, 76 Stat. 59).

(9) The Federal-Aid Highway Act of 1962, as amended (Pub. L. 87–866, 76 Stat. 1145).

(10) The Joint Resolution of August 28, 1965, as amended (Pub. L. 89–139, 79 Stat. 578, 23 U.S.C.A. 101 *et seq.*, notes).

(11) The Federal-Aid Highway Act of 1966, as amended (Pub. L. 889–574, 80 Stat. 766).

(12) The Federal-Aid Highway Act of 1968, as amended (Pub. L. 90–495, 82 Stat. 815).

(13) The Federal-Aid Highway Act of 1970, as amended (except section 118) (Pub. L. 91–605, 84 Stat. 1713).

(14) Sections 103, 104, 111(b), 128(b), 131, 135, 136, 141, 147, 149, 154, 158 through 161, 163, 203, 206, 401, and 402 of the Federal-Aid Highway Act of 1973, as amended (Pub. L. 93–87, 87 Stat. 250; Public Law 93–643, 88 Stat. 2281).

(15) Sections 102(b) (except subparagraph (2)) and (c); 105 (b)(1) and (c); 141; 146; 147; and 152 of the Federal-Aid Highway Act of 1976 (Pub. L. 94–280, 90 Stat. 425).

(16) The Highway Beautification Act of 1965, as amended (Pub. L. 89–285, 79 Stat. 1028, 23 U.S.C.A. 131 *et seq.*, notes).

(17) The Federal-Aid Highway Act of 1982 (Pub. L. 97–327, 96 Stat. 1611), except section 6 as it relates to matters within the primary responsibility of the Federal Transit Administrator.

(18) The Surface Transportation Assistance Act of 1982, as amended, (Pub. L. 97–424, 96 Stat. 2097) except,

(i) Sections 165 and 531 as they relate to matters within the primary responsibility of the Federal Transit Administrator;

(ii) Sections 105(f), 413; 414(b)(2); 421, 426, and Title III; and

(iii) Section 414(b)(1), unless with the concurrence of the National Highway Traffic Safety Administrator.

(19) Sections 103(e), 105(a) through (g), 106(a), and (b), 110(b), 114(d), 117(f), 120(c) and (d), 123(g) and (i), 133(f), 134, 136, 137, 139 through 145, 146(b), 147(c), 149(a) through (f), (h), (i), (k), 151 through 157, 164, and 208 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17, 101 Stat. 132).

(20) Sections 105, 107(c) through (e), 123(a) and (b), 124(c), 126(d) through (g), 138(c), 142, 144, 147 through 154, 167, and 171, Title IV, as amended (as it relates to matters within the primary responsibility of the Federal Highway Administrator), and sections 502–504 of Title V of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2689).

(21) Sections 201 through 205, 327 through 336, 339, 340, 349, 352, 353,

and 408 of the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568).

(22) Sections 1002(e), 1006(h), 1009(c), 1012(b) and (d) through (f), 1015, 1016(g), 1017(c), 1021(c) and (d), 1022(c), 1023(f) through (g), 1032(d), 1038 through 1041, 1044, 1046(d), 1047, 1051, 1057 through 1060, 1072, 1073, 1105, and 6016 of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914).

(23) Sections 1108(f) and (g) and 1224 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107).

(24) Sections 1102, 1109(f), 1111(b)(4), 1112, 1115(c), 1116(a) and (b), 1117, 1119(n), 1120(c), 1201, 1301, 1302, 1303, 1304, 1305, 1306, 1308, 1310, 1404, 1408, 1409(a) and (b), 1410, 1411, 1502, 1604, 1803, 1907, 1908, 1910, 1911, 1916, 1917, 1918, 1923, 1928, 1934, 1935, 1937, 1939, 1940, 1941, 1943, 1944, 1945, 1948, 1949, 1950, 1952, 1957, 1958, 1959, 1962, 1964, 4404 (as it relates to matters within the primary responsibility of the Federal Highway Administrator), 5101(b), 5202(b)(3)(B), (c), and (d), 5203(e) and (f), 5204(g) and (i), 5304, 5305, 5306, 5307, 5308, 5309, 5502, 5504, 5508, 5511, 5512, 5513(b), (f), (k), and (m) (as (m) relates to (b), (f), and (k)), 5514, 6009(b) (as they relate to matters within the primary responsibility of the Federal Highway Administrator), 6017, 6018, 10210, and 10212 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, 119 Stat. 1144).

(d) The Federal Highway Administrator is delegated authority to:

(1) Carry out the functions vested in the Secretary of Transportation by section 601 of the Pipeline Safety Act of 1992 (Pub. L. 102–508, 106 Stat. 3289) relating to construction of the Page Avenue Extension Project in Missouri.

(2) Carry out the functions of the Secretary under the Appalachian Regional Development Act of 1965, 40 U.S.C. Subtitle IV.

(3) Carry out the Act of September 21, 1966, Public Law 89–599, relating to certain approvals concerned with a compact between the States of Missouri and Kansas.

(4) Carry out the functions vested in the Secretary by section 5 (as it relates to bridges, other than railroad bridges, not over navigable waters), and section 8(a) (as it relates to all bridges other than railroad bridges) of the International Bridge Act of 1972 (Public Law 92–434, 86 Stat. 731) [33 U.S.C. 535c and 535e(a)].

(5) Carry out the Highway Safety Act of 1966, as amended (Pub. L. 89–564, 80 Stat. 731) and chapter 4 of title 23

U.S.C. as amended by section 207 of the Surface Transportation Assistance Act of 1978 for highway safety programs, research and development relating to highway design, construction and maintenance, traffic control devices, identification and surveillance of accident locations, and highway-related aspects of pedestrian and bicycle safety.

(6) Exercise the authority vested in the Secretary by 49 U.S.C. 20134(a) with respect to the laws administered by the Federal Highway Administrator pertaining to highway safety and highway construction

(7) Prescribe regulations, as necessary, at Part 24 of this title, to implement the Uniform Act, 42 U.S.C. Chapter 61, and to act as the lead agency in carrying out all other functions vested in the Secretary by the Uniform Act, in coordination with the Under Secretary.

(8) Exercise the authority vested in the Secretary by sections 101, 118, 120(b), 123 and 124 of the Federal-Aid Highway Amendments of 1974 (Pub. L. 93–643, January 4, 1975, 88 Stat. 2281).

(9) Carry out the functions vested in the Secretary of Transportation by section 114 of Part C of the Paperwork Reduction Reauthorization Act of 1986 (contained in the Act Making Continuing Appropriations for Fiscal Year 1987 and for Other Purposes, Pub. L. 99–591, 100 Stat. 3341, 2241–349), relating to construction of Interstate Highway H–3 in Hawaii.

(10) Carry out the functions vested in the Secretary by Public Law 98–229, 98 Stat. 55, insofar as it relates to apportioning certain funds for construction of the Interstate Highway System in Fiscal Year 1985, apportioning certain funds for Interstate substitute highway projects, and increasing amounts available for emergency highway relief.

(11) Carry out all of the functions vested in the Secretary under section 324 of the Fiscal Year 1986 Department of Transportation Appropriations Act (Pub. L. 99–190, 99 Stat. 1288), notwithstanding the reservation of authority under § 1.21 of this part.

(12) Carry out the functions vested in the Secretary of Transportation by section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, (Pub. L. 94–210, 90 Stat. 31) relating to the Alameda Corridor Project in consultation with the Federal Railroad Administrator.

(13) Act as the lead DOT agency in matters relating to the National Environmental Policy Act of 1969, Public Law 91–190, 83 Stat. 852 [42

U.S.C. 4321 *et seq.*] pertinent to the authority vested in the Secretary to establish, operate, and manage the Nationwide Differential Global Positioning System (NDGPS) by section 346 of the Department of Transportation and Related Agencies Appropriations Act, 1998 (Pub. L. 105–66, 111 Stat. 1425).

(14) Exercise the responsibilities of the Secretary under 49 U.S.C. 309 (high speed ground transportation).

§ 1.86 The Federal Motor Carrier Safety Administration.

Is responsible for:

(a) Managing program and regulatory activities, including administering laws and promulgating and enforcing regulations on safety matters relating to motor carrier safety;

(b) Carrying out motor carrier registration and authority to regulate household goods transportation;

(c) Developing strategies for improving commercial motor vehicle, operator, and carrier safety and administering grants to implement these strategies;

(d) Inspecting records and equipment of commercial motor carriers, and investigating accidents and reporting violations of motor carrier safety regulations;

(e) Carrying out research, development, and technology transfer activities to promote safety of operation and equipment of motor vehicles for the motor carrier transportation program; and

(f) Carrying out an effective communications and outreach program which includes providing relevant safety data to the public.

§ 1.87 Delegations to the Federal Motor Carrier Safety Administrator.

The Federal Motor Carrier Safety Administrator is delegated authority to:

(a) Carry out the following functions and exercise the authority vested in the Secretary by 49 U.S.C., Subtitle IV, part B:

(1) Chapter 131, relating to general provisions on transportation policy;

(2) Chapter 133, relating to administrative provisions;

(3) Chapter 135, relating to jurisdiction;

(4) Sections 13704 and 13707 of chapter 137, relating to rates, routes, and services;

(5) Chapter 139, relating to registration and financial responsibility requirements, except section 13907(d)(2);

(6) Chapter 141, relating to operations of motor carriers;

(7) Sections 14701 through 14705, 14707, 14708, 14710, and 14711 of

chapter 147, relating to enforcement remedies, investigations and motor carrier liability; and

(8) Sections 14901 through 14913 and 14915 of chapter 149 relating to civil and criminal penalties for violations of 49 U.S.C. subtitle IV, part B.

(b) Carry out the functions vested in the Secretary by sections 104 and 204 of the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803, relating to self-insurance rules and a savings clause.

(c) Carry out the functions vested in the Secretary by 42 U.S.C. 4917, relating to procedures for the inspection, surveillance and measurement of commercial motor vehicles for compliance with interstate motor carrier noise emission standards and related enforcement activities including the promulgation of necessary regulations.

(d) Carry out the following functions and exercise the authority vested in the Secretary by chapter 51 of title 49, U.S.C.:

(1) Except as delegated to the Under Secretary of Transportation for Policy by § 1.25, carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b), (c), and (d), 5122, 5123, and 5124, relating to the transportation or shipment of hazardous materials by highway.

(2) Carry out the functions vested in the Secretary by 49 U.S.C. 5105(e), relating to inspections of motor vehicles carrying hazardous material; 49 U.S.C. 5109, relating to motor carrier safety permits, except subsection (f); 49 U.S.C. 5112, relating to highway routing of hazardous materials; 49 U.S.C. 5113, relating to unsatisfactory safety ratings of motor carriers; 49 U.S.C. 5119, relating to uniform forms and procedures; and 49 U.S.C. 5125(a) and (c)–(f), relating to preemption determinations or waivers of preemption of hazardous materials highway routing requirements.

(e) Carry out the functions vested in the Secretary by:

(1) Chapter 313 of 49, U.S.C., relating to commercial motor vehicle operators; and

(2) Section 4123(c), (d) and (e) of SAFETEA–LU relating to grants, funding, and contract authority and availability, respectively, for commercial driver's license information system modernization.

(f) Carry out the functions vested in the Secretary by subchapters I, III, and IV of chapter 311, title 49, U.S.C., and 49 U.S.C. 31111, relating to commercial motor vehicle programs, safety regulation, and international activities, except that the authority to promulgate safety standards for commercial motor

vehicles and equipment subsequent to initial manufacture is limited to standards that are not based upon and similar to a Federal Motor Vehicle Safety Standard promulgated under chapter 301 of title 49, U.S.C.

(g) Carry out the functions vested in the Secretary by 49 U.S.C. 5701 relating to food transportation inspections of commercial motor vehicles.

(h) Carry out the functions and exercise the authority delegated to the Secretary in section 2(d)(2) of Executive Order 12777 (3 CFR, 1992 Comp., p. 351), as amended, with respect to highway transportation, relating to the approval of means to ensure the availability of private personnel and equipment to remove, to the maximum extent practicable, a worst case discharge, the review and approval of response plans, and the authorization of motor carriers, subject to the Federal Water Pollution Control Act, Public Law 87–88, as amended [33 U.S.C. 1321], to operate without approved response plans.

(i) Carry out chapter 315 of title 49, U.S.C., relating to motor carrier safety.

(j) Carry out 49 U.S.C. 502, 503, 504, 506, and 523 to the extent they relate to motor carriers, motor carriers of migrant workers, and motor private carriers; 49 U.S.C. 507 to the extent it relates to motor carriers, motor carries of migrant workers, motor private carriers, or freight forwarders; and 49 U.S.C. 505, 508, and 521(b).

(k) Carry out the functions and exercise the authority vested in the Secretary by 23 U.S.C. 502(a)(1)(A).

(l) Carry out the functions vested in the Secretary by the following sections of SAFETEA–LU:

(1) Section 4105(b)(1) relating to the study concerning predatory tow truck operations;

(2) Section 4126, relating to the commercial vehicle information systems and networks deployment program;

(3) Section 4127, relating to outreach and education;

(4) Section 4128, relating to grants under the safety data improvement program;

(5) Section 4130–4133, amending section 229 of the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 31136 note) relating to the operators of vehicles transporting agricultural commodities and farm supplies, and hours of service for miscellaneous vehicle operators;

(6) Section 4134 (49 U.S.C. 31301 note), relating to the grant program for persons to train operators of commercial motor vehicles;

(7) [Reserved]

(8) Section 4136 relating to interstate vans;

(9) Section 4138 relating to high risk carrier compliance (49 U.S.C. 31100 note);

(10) Section 4139(a)(1), relating to the training of and outreach to State personnel; section (b)(1) relating to a review of Canadian and Mexican compliance with Federal motor vehicles safety standards; and the first sentence of section (b)(2) relating to the report concerning the findings and conclusions of the review required by section (b)(1) (see 49 U.S.C. 31100 note);

(11) Section 4143, granting authority to stop commercial motor vehicles, 18 U.S.C. 3064;

(12) Section 4144, relating to a motor carrier safety advisory committee;

(13) [Reserved]

(14) Section 4147, relating to emergency conditions requiring immediate response (amending section 229 of the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 31136 note);

(15) Section 4213, relating to the establishment of a working group for the development of practices and procedures to enhance Federal-State relations (49 U.S.C. 14710 note);

(16) Section 4214, relating to the establishment of a system for collecting consumer complaint information and issuing regulations related to reporting requirements under the system (49 U.S.C. 14701 note); and

(17) Section 4308, granting authority to adopt regulations to carry out SAFETEA–LU, Title IV, subtitle C (49 U.S.C. 13902 note).

§ 1.88 The Federal Railroad Administration.

Is responsible for:

(a) Regulating safety functions pertaining to railroads;

(b) Conducting research and development activity in support of safer and more efficient rail transportation;

(c) Investigating and issuing reports concerning collisions, derailments, and other railroad accidents resulting in serious injury to persons or to the property of a railroad;

(d) Developing safety strategies to combat the causes of collisions, derailments, and other railroad accidents, as well as to reduce overall risk in the Nation's rail systems;

(e) Promoting and strengthening the national rail system, including freight rail and high speed and higher performing intercity passenger rail.

(f) Providing financial assistance, including grants, loans and loan guarantees, for rail freight and intermodal development, as well as

high-speed and intercity passenger rail development;

(g) Maximizing the positive impacts on the U.S. economy by encouraging domestic manufacturing on rail projects through the enforcement of Buy America provisions; and

(h) Strengthening local communities by supporting station-area development and strong connections among rail passenger service, intercity bus, local transit, bicycle/pedestrian, and airport facilities.

§ 1.89 Delegations to the Federal Railroad Administrator.

The Federal Railroad Administrator is delegated authority to:

(a) Carry out the functions and exercise the authority vested in the Secretary by 49 U.S.C. Subtitle V, Part A (Safety, chapter 201 *et seq.*) Part B (Assistance, chapter 221 *et seq.*), Part C (Passenger Transportation, chapter 241 *et seq.*), Part D (High Speed Rail, chapter 261), and section 28101 of Part E, relating to the law enforcement authority of railroad police officers; except 49 U.S.C. 20134 with respect to highway, traffic, and motor vehicle safety and highway construction.

(b) Carry out the functions and exercise the authority vested in the Secretary by the Rail Safety Improvement Act of 2008 (Pub. L. 110–432, Div. A, 122 Stat. 4848).

(c) Carry out the functions and exercise the authority vested in the Secretary by the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110–432, Div. B, 122 Stat. 4907), except Title VI (122 Stat. 4968) as it relates to capital and preventive maintenance projects for the Washington Metropolitan Area Transit Authority.

(d) Carry out the functions vested in the Secretary by 33 U.S.C. 535c, as it relates to railroad bridges not over navigable waterways.

(e) Exercise the administrative powers vested in the Secretary by 49 U.S.C. Subtitle I, Chapter 5 (section 501 *et seq.*) pertaining to railroad safety and 49 U.S.C. 103 (Federal Railway Administration).

(f) Promote and undertake research and development relating to rail matters generally (49 U.S.C. Chapter 3 (section 301 *et seq.*) and 49 U.S.C. 102).

(g) Carry out the functions vested in the Secretary by 45 U.S.C. Ch. 15 (Section 601 *et seq.*) with respect to emergency rail services, except the authority to make findings required by 45 U.S.C. 662(a) and the authority to sign guarantees of certificates issued by trustees.

(h) Carry out the functions vested in the Secretary by 45 U.S.C. chapter 17 (section 801 *et seq.*) with respect to railroad revitalization and regulatory reform and the Railroad Rehabilitation and Improvement Financing program.

(i) Carry out the functions vested in the Secretary by 45 U.S.C. chapter 21 (section 1201 *et seq.*) related to the Alaska Railroad transfer.

(j) Except as delegated to the Under Secretary of Transportation for Policy by § 1.25 of this part, carry out the functions vested in the Secretary by 49 U.S.C. 5121–5124 relating to the transportation or shipment of hazardous materials by railroad.

(k) Carry out the functions vested in the Secretary by section 7 of Executive Order 12580 (delegating sections 108 and 109, respectively, of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (49 U.S.C. 9615 *et seq.*), insofar as they relate to rolling stock.

(l) Carry out the functions vested in the Secretary by 33 U.S.C. 493, relating to disputes over the terms and compensation for use of railroad bridges built under that statute.

(m) Carry out the functions vested in the Secretary by 49 U.S.C. 5701 with respect to transportation of food and other products by railroad.

(n) Carry out the functions vested in the Secretary by 23 U.S.C. 322 (Magnetic Levitation Transportation Technology Deployment Program).

(o) Carry out the functions vested in the Secretary by sections 1307 (see note to 23 U.S.C. 322), and 1946 of SAFETEA–LU as they relate to deployment of magnetic levitation transportation projects and a study of rail transportation and regulation.

(p) Investigate and report on safety compliance records of applicants seeking railroad operating authority from the Surface Transportation Board, and to intervene and present evidence concerning applicants' fitness in Board proceedings under 49 U.S.C. 307, relating to railroads.

(q) Carry out the function vested in the Secretary by the Bankruptcy Code (11 U.S.C. 1163), which relates to the nomination of trustee for rail carriers in reorganization, with the concurrence of the Office of the General Counsel.

§ 1.90 The Federal Transit Administration.

Is responsible for:

(a) Providing grants that support the development of safe, comprehensive and coordinated public transportation systems;

(b) Creating and implementing a national public transportation safety

program that includes the development of safety practices and standards;

(c) Assisting public transportation systems to achieve and maintain their infrastructure, equipment and vehicles in a state of good repair;

(d) Promoting the environmental benefits of public transportation through continuing, cooperative, and comprehensive planning that improves the performance of the intermodal transportation system.

(e) Supporting research, development, demonstration, and deployment projects dedicated to assisting in the delivery of safe, efficient and effective public transportation service;

(f) Supporting, in coordination with FHWA and FRA, strong connections between public transportation and other modes of transportation, including bicycle/pedestrian facilities and station-area development that strengthen local communities; and

(g) Maximizing the positive impacts on the U.S. economy by encouraging domestic manufacturing on transit projects through the enforcement of Buy America provisions.

§ 1.91 Delegations to the Federal Transit Administrator.

The Secretary delegates to the Federal Transit Administrator the authority vested in him to carry out the following:

(a) Chapter 53 of title 49, United States Code.

(b) Sections 3 and 9 through 15 of the National Capital Transportation Assistance Act of 1969, as amended (DC Code, § 9–1101.01 *et seq.*).

(c) Sections of title 23, United States Code, that involve public transportation projects, including those provisions that pertain to environmental reviews and use of historic resources for public transportation projects.

(d) Section 303 of title 49, United States Code, as it involves public transportation projects.

(e) The following sections of SAFETEA–LU:

(1) [49 U.S.C. 5308 note], 3046 [49 U.S.C. 5338 note], 3048, 3049 [5 U.S.C. 7905 note], and 3050; and

(2) Sections 6009(b) [23 U.S.C. 138 note] and (c), and 6010, as they relate to public transit projects.

(f) Section 601 of Title VI of the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110–432, Div. B).

§ 1.92 The Maritime Administration.

Is responsible for:

(a) Fostering the development and maintenance of a United States merchant marine sufficient to meet the needs of the national security and of the

domestic and foreign commerce of the United States;

(b) Operating the U.S. Merchant Marine Academy in order to train officers for the Nation's merchant marine;

(c) Promoting development of ports and intermodal transportation systems through investments in port infrastructure via grant programs and America's Marine Highway program;

(d) Promoting the growth and modernization of the U.S. merchant marine and U.S. shipyards by administering loan and guarantee programs;

(e) Overseeing the administration of cargo preference statutes;

(f) Maintaining custody of, operating, and preserving ships in the National Defense Reserve Fleet as well as other vessels under the custody of MARAD and managing, maintaining and operating its Ready Reserve Force component;

(g) Conducting research and development to improve and promote the waterborne commerce of the United States.

§ 1.93 Delegations to the Maritime Administrator.

The Maritime Administrator is delegated authority to:

(a) Carry out the functions and exercise the authorities vested in the Secretary under Subtitle V of title 46, U.S.C., except for 46 U.S.C. 51303 and 55601(c) and (d);

(b) Carry out the functions and exercise the authorities vested in the Secretary under Subtitle III of title 46, U.S.C.;

(c) Carry out the functions and exercise the authorities vested in the Secretary under the Merchant Ship Sales Act of 1946, as amended (50 U.S.C. App. 1735 *et seq.*);

(d) Carry out the functions and exercise the authorities vested in the Secretary under 50 U.S.C. App 1744 with respect to the National Shipping Authority;

(e) Exercise the authority vested in the Administrator of General Services by the Act of June 1, 1948, Public Law 80–566, 62 Stat. 281, 40 U.S.C. 318–318c and the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377, and delegated to the Secretary of Transportation by the Administrator of General Services on March 23, 2000, relating to the enforcement of laws for the protection of property and persons at the United States Merchant Marine Academy, located in Kings Point, New York. This may be accomplished through appointment of uniformed personnel as

special police, establishment of rules and regulations governing conduct on the affected property, and execution of agreements with other Federal, State, or local authorities.

(f) Carry out the functions and exercise the authorities vested in the Secretary by section 3(d) of the Act to Prevent Pollution from Ships (33 U.S.C. 1902(d)) as it relates to ships owned or operated by the Maritime Administration when engaged in noncommercial service;

(g) Carry out the functions vested in the Secretary by 40 U.S.C. 554 relating to authority to convey surplus real property to public entities for use in the development or operation of port facilities;

(h) Carry out the following powers and duties and exercise the authorities vested in the Secretary by the Deepwater Port Act of 1974, Public Law 93–627, as amended (33 U.S.C. 1501 *et seq.*),

(1) Section 4: The authority to issue, transfer, amend, or reinstate a license for the construction and operation of a deepwater port (33 U.S.C. 1503(b));

(2) Section 4: The authority to process applications for the issuance, transfer, amendment, or reinstatement of a license for the construction and operation of a deepwater port (33 U.S.C. 1503(b)), in coordination with the Commandant of the Coast Guard;

(3) Section 5(h)(2): Approval of fees charged by adjacent coastal States for use of a deepwater port and directly related land-based facilities (33 U.S.C. 1504(h)(2));

(4) Section 4: Make Adjacent Coastal State designations pursuant to 33 U.S.C. 1508(a)(2);

(5) Section 11: In collaboration with the Assistant Secretary for Aviation and International Affairs and the Assistant Secretary for Transportation Policy, consultation with the Secretary of State relating to international actions and cooperation in the economic, trade and general transportation policy aspects of the ownership and operation of deepwater ports (33 U.S.C. 1510);

(6) Section 16(b): Submission of notice of the commencement of a civil suit (33 U.S.C. 1515(b));

(7) Section 16(c): Intervention in any civil action to which the Secretary is not a party (33 U.S.C. 1515(c));

(8) Sections 8(b), 12: Authority to request the Attorney General to seek the suspension or termination of a deepwater port license and to initiate a proceeding before the Surface Transportation Board (33 U.S.C. 1507, 1511);

(i) Carry out the functions and exercise the authority vested in the

Secretary by section 109 of the Maritime Transportation Security Act of 2002, Public Law 107–295, 116 Stat. 2064, 46 U.S.C. 70101 note, to provide training for maritime security professionals.

(j) Exercise all the powers of the Secretary under 49 U.S.C. 336 with respect to civil penalties;

(k) Carry out all of the duties, authorities and powers of the Secretary under the Reefs for Marine Life Conservation law, 16 U.S.C. 1220 *et seq.*;

(l) In consultation and coordination with the Office of Intelligence, Security and Emergency Response, carry out the functions related to emergency preparedness and response vested in the Secretary by the Defense Production Act of 1950, 50 U.S.C. App. 2061, *et seq.*, as such authorities relate to the use of sealift support and port facilities, and other maritime industry related facilities and services, and maritime-related voluntary agreements pursuant to Section 708;

(m) Carry out the functions related to the National Defense Reserve Fleet vested in the Secretary pursuant to 50 U.S.C. App. 1744;

(n) Carry out all of the duties, authorities and powers of the Secretary under the following statutes:

(1) 10 U.S.C. 2218, the National Defense Sealift Fund;

(2) 40 U.S.C. 3134, Bond waiver authority for certain contracts;

(3) 46 U.S.C. 501(b), Waiver of navigation and vessel-inspection laws and determination of non-availability of qualified U.S. flag vessels;

(4) 46 U.S.C. 3316, granting authority to appoint a representative to Executive Board of the American Bureau of Shipping (ABS);

(5) 46 U.S.C. 12119(a)(5), authority to waive or reduce the qualified proprietary cargo requirements and determine citizenship;

(6) 50 U.S.C. 196, Emergency foreign vessel acquisition; purchase and requisition of vessels lying idle in United States waters;

(7) 50 U.S.C. 197, Voluntary purchase or charter agreement;

(8) 50 U.S.C. 198, granting authority over requisitioned vessels;

(o) Carry out all of the duties, authorities and powers of the Secretary with respect to 16 U.S.C. 1220 *et seq.* (use of obsolete ships as reefs for marine life conservation);

(p) Carry out all of the duties, powers and authorities delegated to the Secretary of Transportation by the Administrator of General Services with respect to the leasing and management of property under 41 CFR 102–72.30, Delegations of Authority;

(q) Carry out all of the duties, authorities and powers vested in the Secretary by 46 U.S.C. 70101 note, to provide training for maritime security professionals;

(r) Carry out the duties, authorities and powers of the Secretary under the following statutes:

(i) Title XV, Subtitle B of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101-624 (104 Stat. 3359, 3665), 7 U.S.C. 1421 and Chapter 553 of Title 46, U.S.C., authorizing the Secretary to designate "American Great Lakes" vessels that are exempt from the restrictions relating to the carriage of preference cargoes;

(ii) 46 U.S.C. 2302(e) (determination of substandard vessels);

(iii) Section 304(a) of Coast Guard and Maritime Transportation Act of 2006, 33 U.S.C. 1503(i), a program to promote LNG tanker transportation;

(iv) Section 306 of Public Law 111-281, concerning the phaseout of vessels supporting oil and gas development.

(s) Carry out the functions and exercise the authorities vested in the President by Section 1019 of John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) and delegated to the Secretary by the President;

(t) Lead efforts pertaining to civil emergency planning for sealift support for North Atlantic Treaty Organization (NATO) operations, including coordinating DOT representation on sealift-related committees, in coordination with the Office of Intelligence, Security and Emergency Response.

§ 1.94 The National Highway Traffic Safety Administration.

Is responsible for:

(a) *In highway safety*, setting uniform guidelines for a coordinated national highway safety formula grant program carried out by the States and local communities; carrying out a research, development, and demonstration program; administering highway safety grant programs to encourage State efforts in such areas as occupant protection, impaired and distracted driving, traffic safety data information system improvements, motorcyclist safety, and child safety restraints; administering a nationwide high visibility enforcement program; and administering the National Driver Register.

(b) *In motor vehicle safety*, establishing and enforcing safety standards and regulations for the manufacture and importation of motor vehicles and motor vehicle equipment; conducting research, development, and

testing concerning motor vehicle safety, including vehicle to vehicle and vehicle to infrastructure technologies and other new or advanced vehicle technologies; and investigating safety-related defects and non-compliance in motor vehicles and motor vehicle equipment and administering related recalls.

(c) *In automobile fuel economy*, establishing automobile fuel economy standards for passenger and non-passenger automobiles and fuel efficiency standards for medium and heavy vehicles.

(d) *In consumer protection and information*, establishing requirements and carrying out programs for passenger motor vehicle information, such as the New Car Assessment Program; bumper standards for passenger motor vehicles; odometer requirements; and passenger motor vehicle theft prevention standards.

§ 1.95 Delegations to the National Highway Traffic Safety Administrator.

The National Highway Traffic Safety Administrator is delegated authority to:

(a) Exercise the authority vested in the Secretary under chapters 301, 303, 321, 323, 325, 327, 329, and 331, of Title 49, U.S.C., except for 49 U.S.C. 32916(b).

(b) Exercise the authority vested in the Secretary by 49 U.S.C. 20134(a) with respect to laws administered by the National Highway Traffic Safety Administrator pertaining to highway, traffic and motor vehicle safety.

(c) Carry out, in coordination with the Federal Motor Carrier Safety Administrator, the authority vested in the Secretary by subchapter III of chapter 311 of title 49, U.S.C., to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture when the standards are based upon and similar to a Federal Motor Vehicle Safety Standard promulgated, either simultaneously or previously, under chapter 301 of title 49, U.S.C.

(d) Carry out the Highway Safety Act of 1966, as amended (23 U.S.C. 401 *et seq.*), except as it relates to highway safety programs, research and development relating to highway design, construction and maintenance; traffic control devices; identification and surveillance of accident locations; and highway-related aspects of pedestrian and bicycle safety.

(e) Carry out the functions and exercise the authority vested in the Secretary under 23 U.S.C. 406(e)(3), to engage in activities with States and State legislators to consider proposals related to safety belt use laws. The National Highway Traffic Safety

Administrator may further delegate this authority, including to other Administrators within the Department.

(f) Carry out the functions and exercise the authority vested in the Secretary for the following provisions of Title 23, U.S.C. (with respect to matters within the primary responsibility of the National Highway Traffic Safety Administrator): 153, 154, 157, 158, 161, 163, 164, and 313 (Buy America).

(g) Carry out the consultation functions vested in the Secretary by Executive Order 11912, as amended (energy conservation) relating to automobiles.

(h) Exercise the authority vested in the Secretary by section 210(2) of the Clean Air Act, Public Law 90-148, as amended [42 U.S.C. 7544(2)].

(i) Carry out the following functions and exercise the authority vested in the Secretary under SAFETEA-LU:

(1) Section 1906 [23 U.S.C. 402 note], relating to the grant program to prohibit racial profiling;

(2) Section 2001(d) [23 U.S.C. 401 note], relating to transfers of funds;

(3) Section 2003(c), relating to on-scene motor vehicle collision causation;

(4) Section 2003(d) [23 U.S.C. 403 note], relating to research on distracted, inattentive, and fatigued drivers;

(5) Section 2003(f), relating to refusal of intoxication testing;

(6) Section 2003(g), relating to impaired motorcycle driving;

(7) Section 2003(h), relating to reducing impaired driving recidivism;

(8) Section 2009(f) [23 U.S.C. 402 note], relating to the annual evaluation, in regard to high visibility enforcement program;

(9) Section 2010 [23 U.S.C. 402 note], relating to motorcyclist safety;

(10) Section 2011 [23 U.S.C. 405 note], relating to child safety and child booster seat incentive grants;

(11) Section 2012, relating to safety data;

(12) Section 2013 [23 U.S.C. 403 note], relating to drug-impaired driving enforcement;

(13) Section 2014 [23 U.S.C. 402 note], relating to first responder vehicle safety program;

(14) Section 2015, relating to driver performance study;

(15) Section 2016, relating to rural state emergency medical services optimization pilot program;

(16) Section 2017(a), relating to older driver safety and, (b) [23 U.S.C. 402 note], relating to law enforcement training;

(17) Section 5513(e) [23 U.S.C. 502 note], relating to automobile accident injury research;

(18) Section 5513(m) [23 U.S.C. 502 note] as it relates to section 513(e);

(19) Section 10202 [42 U.S.C. 300d-4], relating to emergency medical services;

(20) Section 10302, relating to side-impact crash protection rulemaking;

(21) Section 10303 [49 U.S.C. 30101 note], relating to tire research;

(22) Section 10305(b) [49 U.S.C. 30101 note], relating to the publication of non-traffic incident data collection;

(23) Section 10306, relating to the study of safety belt use technologies;

(24) Section 10307(b) [15 U.S.C. 1232 note], relating to the issuing of regulations in regard to safety labeling requirements;

(25) Section 10308, relating to power window switches; and

(26) Section 10309(a), relating to the testing of 15-passenger van safety.

(j) Carry out the following functions and exercise the authority vested in the Secretary under the Energy Independence and Security Act of 2007 (Pub. L. 110–140):

(1) Section 106 [49 U.S.C. 32902 note], relating to the continued applicability of existing standards;

(2) Section 107 [49 U.S.C. 32902 note], relating to the National Academy of Sciences studies;

(3) Section 108, relating to the National Academy of Sciences study of medium-duty and heavy-duty truck fuel economy;

(4) Section 110 [49 U.S.C. 32908 note], relating to the periodic review of accuracy of fuel economy labeling;

(5) Section 113 [49 U.S.C. 32904 note], relating to the exemption from separate calculation requirement;

(6) Section 131(b)(2) and (c)(1) [42 U.S.C. 17011(b)(2), (c)(1)], relating to the Plug-in Electric Drive Vehicle Program;

(7) Section 225(a), relating to the study of optimization of flexible fueled vehicles to use E–85 fuel;

(8) Section 227(a), relating to the study of optimization of biogas used in natural gas vehicles;

(9) Section 242 [42 U.S.C. 17051], relating to renewable fuel dispenser requirements; and

(10) Section 248(a) [42 U.S.C. 17054(a)], relating to biofuels distribution and advanced biofuels infrastructure.

(k) Carry out the functions and exercise the motor vehicle safety authority vested in the Secretary under § 7103 of the Transportation Equity Act for the 21st Century, Public Law 105–178.

(l) Carry out the functions and exercise the motor vehicle safety authority vested in the Secretary under §§ 3(d), 10, 11 and 13 through 17 [uncodified provisions] of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Public Law 106–414.

(m) Carry out the functions and exercise the motor vehicle safety authority vested in the Secretary under Anton's Law, Public Law 107–318.

(n) Carry out the functions and exercise the motor vehicle safety authority vested in the Secretary under the Cameron Gulbransen Kids Transportation Safety Act of 2007 or the K.T. Safety Act of 2007, Public Law 110–189.

(o) Carry out the functions and exercise the motor vehicle safety authority vested in the Secretary under the Pedestrian Safety Enhancement Act of 2010, Public Law 111–373.

§ 1.96 The Pipeline and Hazardous Materials Safety Administration.

Is responsible for:

(a) *Pipelines.* (1) Administering a national program of safety in natural gas and hazardous liquid pipeline transportation including identifying pipeline safety concerns, developing uniform safety standards, and promulgating and enforcing safety regulations;

(2) Increasing the gas and liquid pipeline industry's focus on safety beyond compliance with minimum standards, with particular attention to developing strong safety cultures in regulated entities;

(3) Enhancing information awareness systems at the State and local levels to reduce pipeline damage from excavation and providing grants to support these systems; and

(4) Encouraging the timely replacement of aging and deteriorating pipelines in distribution systems, especially in areas with high potential negative consequences to public safety and the environment.

(b) *Hazardous Materials.* (1) Administering a national program of safety, including security, in multi-modal hazardous materials transportation including identifying hazardous materials safety concerns, developing uniform safety standards, and promulgating and enforcing safety and security regulations; and

(2) Conducting outreach and provide available grants assistance to increase awareness and emergency preparedness.

§ 1.97 Delegations to the Pipeline and Hazardous Materials Safety Administrator.

The Pipeline and Hazardous Materials Safety Administrator is delegated responsibility to:

(a) *Pipelines.* (1) Exercise the authority vested in the Secretary under chapter 601 of title 49, U.S.C.

(2) Exercise the authority vested in the Secretary under section 28 of the Mineral Leasing Act, as amended (30 U.S.C. 185(a) and 30 U.S.C. 185 (w)(3)).

(3) Exercise the authority vested in the Secretary under section 21 of the Deepwater Port Act of 1974, as amended (33 U.S.C. 1520) relating to the establishment, enforcement and review of regulations concerning the safe construction, operation or maintenance of oil or natural gas pipelines on Federal lands and the Outer Continental Shelf.

(4) Exercise the authority vested in the Secretary under section 5 of the International Bridge Act of 1972 (33 U.S.C. 535) as it relates to pipelines not over navigable waterways.

(5) Exercise the authority vested in the Secretary under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 *et seq.*) with respect to the establishment, enforcement and review of regulations concerning pipeline safety.

(6) Carry out the functions vested in the Secretary by section 7 of Executive Order 12580 (delegating sections 108 and 109, respectively, of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (49 U.S.C. 9615 *et seq.*), insofar as they relate to pipelines.

(7) Exercise the authority vested in the Secretary by 49 U.S.C. 60301 as it relates to pipeline safety user fees.

(8) Exercise the authority vested in the Secretary by 49 U.S.C. 6101 *et seq.* as it relates to pipeline damage prevention One Call programs.

(9) Exercise the authority vested in the Secretary by the Pipeline Safety Improvement Act of 2002 (Pub. L. 107–355, 116 Stat. 2985).

(10) Exercise the authority vested in the Secretary by the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Pub. L. 112–90).

(b) *Hazardous materials.* Except as delegated to the Under Secretary of Transportation for Policy by § 1.25:

(1) Carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b), (c), (d) and (e), 5122, 5123, and 5124, with particular emphasis on the shipment of hazardous materials and the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of multi-modal containers that are represented, marked, certified, or sold for use in the transportation of hazardous materials; and

(2) Carry out the functions vested in the Secretary by all other provisions of the Federal hazardous material transportation law (49 U.S.C. 5101 *et seq.*) except as delegated by §§ 1.83(d)(2) (FAA) and 1.87(d)(2) (FMCSA) of this subpart and by paragraph 2(99) of Department of Homeland Security Delegation No. 0170.

(c) Exercise the authority delegated to the Secretary in the following sections of Executive Order 12777:

(1) Section 2(b)(2) relating to the establishment of procedures, methods, equipment and other requirements to prevent discharges from, and to contain oil and hazardous substances in, pipelines, motor carriers, and railroads; and

(2) Section 2(d)(2) relating to the issuance of regulations requiring the owners or operators of pipelines, motor carriers, and railroads, subject to the Federal Water Pollution Control Act (33 U.S.C. 1321 *et seq.*), to prepare and submit response plans. For pipelines subject to the Federal Water Pollution Control Act, this authority includes the approval of means to ensure the availability of private personnel and equipment to remove, to the maximum extent practicable, a worst case discharge, the review and approval of response plans, and the authorization of pipelines to operate without approved response plans.

§ 1.98 The Research and Innovative Technology Administration.

Is responsible for:

(a) Coordinating, facilitating, and reviewing the Department's research and development programs and activities, except as related to NHTSA.

(b) After consultation with Operating Administration and OST offices, making recommendations to the Secretary on all Operating Administration and OST research budgets;

(c) Providing leadership on technical, navigation, communication, and systems engineering activities, and spectrum management on behalf of the civil and civilian PNT communities;

(d) Directing and administering university transportation research grants;

(e) In coordination with FHWA, NHTSA, and FMCSA, conducting vehicle-to-vehicle and vehicle-to-infrastructure research;

(f) Advancing Intelligent Transportation Systems (ITS) research and deployment of real-time multimodal travel information for travelers, carriers, and public agencies;

(g) Providing oversight of the activities of the Volpe National Transportation Systems Center, the ITS Joint Program Office, the Bureau of Transportation Statistics, and the Transportation Safety Institute; and

(h) Providing technical support to advance the mission of the Secretary's Safety Council.

§ 1.99 Delegations to the Research and Innovative Technology Administrator.

The Research and Innovative Technology Administrator is delegated authority for the following:

(a) *Coordination of departmental research and development programs and activities.* (1) Coordinate, facilitate, and review all departmental research and development programs and activities, except those carried out by the National Highway Traffic Safety Administration, as described in section 4(b) of the Norman Y. Mineta Research and Special Programs Improvement Act (Pub. L. 108-426, 118 Stat. 2423).

(2) After consultation with Operating Administration and OST offices, RITA shall make recommendations to the Secretary on all Operating Administration and OST research budgets.

(b) *Science and technology.* (1) With respect to scientific and technological matters, serve as principal advisor to the Secretary and representative of the Department to the academic community, the private sector, professional organizations, and other federal, state and local government agencies.

(2) Serve as principal liaison official for the Department of Transportation with the Office of Science and Technology Policy in the Executive Office of the President, the National Science and Technology Council, and the President's Committee of Advisors on Science and Technology.

(3) Serve as primary official responsible for coordination and oversight of the Department's implementation of section 2 of the Federal Technology Transfer Act of 1986 (15 U.S.C. 3710a), relating to the transfer of Federal technology to the marketplace; and section 12(d) of the National Technology Transfer and Advancement Act of 1996 (Pub. L. 104-113), as implemented by OMB Circular A-119: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities.

(4) Serve as Chair and Executive Secretary of the Department of Transportation's Research, Development and Technology Planning Council and Planning Team.

(5) Advocate Department of Transportation policy and program coordination efforts associated with transportation research.

(6) Represent the Department of Transportation on departmental, national and international committees and meetings dealing with transportation research and development (R & D).

(7) Manage the strategic planning process for transportation R & D across the Department of Transportation and, through the National Science and Technology Council, across the Federal Government.

(8) Carry out the transportation research and development strategic planning function vested in the Secretary by 23 U.S.C. 508.

(9) Conduct transportation system-level assessments and policy research.

(10) Facilitate the creation of transportation public/private partnerships.

(11) Foster innovation in the transportation sector.

(12) Disseminate information on departmental, national, and international transportation R & D activities.

(13) Provide legal support for Departmental intellectual property and patent issues.

(14) Manage department- and government-wide (inter/multimodal) transportation R & D programs.

(15) Oversee such advisory boards that deal with transportation system-level R & D assessments and issues, such as the Transportation Research Board Committee on the Federal Transportation R & D Strategic Planning Process.

(c) *Advanced vehicle technology.* Carry out the functions vested in the Secretary by section 5111 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5506), as extended by the Surface Transportation Extension Act of 2004, Part V, Public Law 108-310, September 30, 2004, 118 Stat. 1144, and section 5513(j) of SAFETEA-LU.

(d) *Remote sensing technology.* Carry out the functions vested in the Secretary by section 5113 of the Transportation Equity Act for the 21st Century (23 U.S.C. 502 Note), as extended by the Surface Transportation Extension Act of 2004, Part V, Public Law 108-310, September 30, 2004, 118 Stat. 1144, and section 5506 of SAFETEA-LU.

(e) *University transportation research.* Carry out the functions vested in the Secretary by section 5110 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5505), as extended by the Surface Transportation Extension Act of 2004, Part V, Public Law 108-310, September 30, 2004, 118 Stat. 1144, and sections 5401 and 5402 of SAFETEA-LU.

(f) *Volpe National Transportation Systems Center.* Exercise the authority vested in the Secretary with respect to the activities of the Volpe National Transportation Systems Center as described in 49 U.S.C. 112(d)(1)(E) and carry out the functions vested in the

Secretary by 49 U.S.C. 328 with respect to the working capital fund for financing the activities of the Volpe National Transportation Systems Center.

(g) Exercise authority over the Transportation Safety Institute.

(h) Carry out the functions vested in the Secretary by 49 U.S.C. 111 relating to transportation statistics, analysis, and reporting.

(i) Carry out the functions vested in the Secretary by 49 U.S.C. 5503(d) (Office of Intermodalism).

(j) *Aviation information.* (1) Carry out the functions vested in the Secretary by 49 U.S.C. 329(b)(1) relating to the collection and dissemination of information on civil aeronautics.

(2) Carry out the functions vested in the Secretary by section 4(a)(7) of the Civil Aeronautics Board Sunset Act of 1984 (October 4, 1984; Pub. L. 98-443) relating to the reporting of the extension of unsecured credit to political candidates (section 401, Federal Election Campaign Act of 1971; 2 U.S.C. 451), in conjunction with the General Counsel and the Assistant Secretary for Aviation and International Affairs.

(3) Carry out the functions vested in the Secretary by: 49 U.S.C. 40113 (relating to taking such actions and issuing such regulations as may be necessary to carry out its air commerce and safety responsibilities), 49 U.S.C. 41702 (relating to the duty of carriers to provide safe and adequate service), 49 U.S.C. 41708 and 41709 (relating to the requirement to keep information and the forms in which it is to be kept), and 49 U.S.C. 41701 (relating to establishing just and reasonable classifications of carriers and rules to be followed by each) as appropriate to carry out the responsibilities under this paragraph in conjunction with the General Counsel and the Assistant Secretary for Aviation and International Affairs.

(k) *Hazardous materials information.* In coordination with the Under Secretary, work with the Operating Administrations to determine data needs, collection strategies, and analytical techniques appropriate for implementing 49 U.S.C. 5101 *et seq.*

(l) Carry out the functions vested in the Secretary by section 1801(e) of SAFETEA-LU (establishing and maintaining a national ferry database).

(m) Carry out the functions vested in the Secretary by section 5513(c), (d), (g), (h), (i), (l), and (m) of SAFETEA-LU (establishing various research grants)

(n) Carry out the functions vested in the Secretary by section 5201(m) of SAFETEA-LU (biobased transportation research program).

(o) Carry out the functions vested in the Secretary by 23 U.S.C. 509

(establishing and supporting a national cooperative freight transportation research program).

(p) Positioning, navigation and timing (PNT) and spectrum management.

Carry out the functions described in the Secretarial memo of August 1, 2007, "Positioning, Navigation and Timing (PNT) and Spectrum Management Realignment under the Research and Innovative Technology Administration (RITA)."

(q) Carry out the Secretary's authority to establish, operate and manage the Nationwide Differential Global Positioning System (NDGPS) as described in Section 346 of Public Law 105-66 (Department of Transportation and Related Agencies Appropriations Act of 1998).

§ 1.100 The Saint Lawrence Seaway Development Corporation.

Is responsible for the development, operation, and maintenance of that part of the Saint Lawrence Seaway within the territorial limits of the United States.

§ 1.101 Delegations to Saint Lawrence Seaway Development Corporation Administrator.

The Administrator of the Saint Lawrence Seaway Development Corporation is delegated authority to:

(a) Carry out the functions vested in the Secretary by sections 4, 5, 6, 7, 8, 12 and 13 of section 2 of the Port and Tanker Safety Act of 1978 (92 Stat. 1471) [33 U.S.C. 1223-1225, 1227, and 1231-1232] as they relate to the operation of the Saint Lawrence Seaway.

(b) Carry out the functions vested in the Secretary by section 5 of the International Bridge Act of 1972 (Pub. L. 92-434) [33 U.S.C. 535c] as it relates to the Saint Lawrence River.

(c) Carry out the functions vested in the Secretary by section 3(d) of the Act to Prevent Pollution from Ships [33 U.S.C. 1902e] as it relates to ships owned or operated by the Corporation when engaged in noncommercial service.

Appendix A to Part I—Delegations and Redelegations by Secretarial Officers

1. *Director of Budget.* The Assistant Secretary for Budget and Programs and CFO has redelegated to the Director of Budget authority to—

(a) Request apportionment and reapportionment of funds by the Office of Management and Budget, provided that no request for apportionment or reapportionment which anticipates the need for a supplemental appropriation shall be submitted to the Office of Management and Budget without appropriate certification by the Secretary.

(b) Issue allotments or allocations of funds to components of the Department.

2. *Chief Counsels.* The General Counsel has delegated to the Chief Counsels the authority delegated to the General Counsel by Amendment 1-41 to part 1 of title 49, Code of Federal Regulations, 35 FR 17653, November 17, 1970, as follows:

Section 855 of the Revised Statutes, as amended by Public Law 91-393, 84 Stat. 835 (40 U.S.C. 255) authorizes the Attorney General to delegate to other departments and agencies his authority to give written approval of the sufficiency of the title to land being acquired by the United States. The Attorney General has delegated to the Assistant Attorney General in charge of the Land and Natural Resources Division the authority to make delegations under that law to other Federal departments and agencies (35 FR 16084; 28 CFR § 0.66). The Assistant Attorney General, Land and Natural Resources Division, has further delegated certain responsibilities in connection with the approval of the sufficiency of the title to land to the Department of Transportation as follows:

Delegation to the Department of Transportation for the Approval of the Title to Lands Being Acquired for Federal Public Purposes

Pursuant to the provision of Public Law 91-393, approved September 1, 1970, 84 Stat. 835, amending R.S. 355 (40 U.S.C. 255), and acting under the provisions of Order No. 440-70 of the Attorney General, dated October 2, 1970, the responsibility for the approval of the sufficiency of the title to land for the purpose for which the property is being acquired by purchase or condemnation by the United States for the use of your Department is, subject to the general supervision of the Attorney General and to the following conditions, hereby delegated to your Department.

This delegation of authority is further subject to:

1. Compliance with the regulations issued by the Assistant Attorney General on October 2, 1970, a copy of which is enclosed.

2. This delegation is limited to:

(a) The acquisition of land for which the title evidence, prepared in compliance with these regulations, consists of a certificate of title, title insurance policy, or an owner's duplicate Torrens certificate of title.

(b) The acquisition of lands valued at \$100,000 or less, for which the title evidence consists of abstracts of title or other types of title evidence prepared in compliance with said regulations.

As stated in the above-mentioned Act, any Federal department or agency which has been delegated the responsibility to approve land titles under the Act may request the Attorney General to render his opinion as to the validity of the title to any real property or interest therein, or may request the advice or assistance of the Attorney General in connection with determinations as to the sufficiency of titles.

The Chief Counsels of the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, National Highway Traffic

Safety Administration, Federal Transit Administration, the Saint Lawrence Seaway Development Corporation, Maritime Administration, and Research and Innovative Technology Administration are hereby authorized to approve the sufficiency of the title to land being acquired by purchase or condemnation by the United States for the use of their respective organizations. This delegation is subject to the limitations imposed by the Assistant Attorney General, Land and Natural Resources Division, in his

delegation to the Department of Transportation. Redelelegation of this authority may only be made by the Chief Counsels to attorneys within their respective organizations.

If the organization does not have an attorney experienced and capable in the examination of title evidence, a Chief Counsel may, with the concurrence of the General Counsel, request the Attorney General to (1) furnish an opinion as to the validity of a title to real property or interest

therein, or (2) provide advice or assistance in connection with determining the sufficiency of the title.

Issued at Washington, DC, this 31st day of July, 2012.

Ray LaHood,

Secretary of Transportation.

[FR Doc. 2012-19397 Filed 8-16-12; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at <http://www.gpo.gov/fdsys>. Some laws may not yet be available.

H.R. 1369/P.L. 112-156

To designate the facility of the United States Postal Service located as 1021 Pennsylvania Avenue in Hartshorne, Oklahoma, as the "Warren Lindley Post Office". (Aug. 10, 2012; 126 Stat. 1212)

H.R. 1560/P.L. 112-157

To amend the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act to allow

the Ysleta del Sur Pueblo Tribe to determine blood quantum requirement for membership in that tribe. (Aug. 10, 2012; 126 Stat. 1213)

H.R. 1905/P.L. 112-158

Iran Threat Reduction and Syria Human Rights Act of 2012 (Aug. 10, 2012; 126 Stat. 1214)

H.R. 3276/P.L. 112-159

To designate the facility of the United States Postal Service located at 2810 East Hillsborough Avenue in Tampa, Florida, as the "Reverend Abe Brown Post Office Building". (Aug. 10, 2012; 126 Stat. 1270)

H.R. 3412/P.L. 112-160

To designate the facility of the United States Postal Service located at 1421 Veterans Memorial Drive in Abbeville, Louisiana, as the "Sergeant Richard Franklin Abshire Post Office Building". (Aug. 10, 2012; 126 Stat. 1271)

H.R. 3501/P.L. 112-161

To designate the facility of the United States Postal Service located at 125 Kerr Avenue in Rome City, Indiana, as the "SPC Nicholas Scott Hartge Post Office". (Aug. 10, 2012; 126 Stat. 1272)

H.R. 3772/P.L. 112-162

To designate the facility of the United States Postal Service located at 150 South Union Street in Canton, Mississippi,

as the "First Sergeant Landres Cheeks Post Office Building". (Aug. 10, 2012; 126 Stat. 1273)

H.R. 5986/P.L. 112-163

To amend the African Growth and Opportunity Act to extend the third-country fabric program and to add South Sudan to the list of countries eligible for designation under that Act, to make technical corrections to the Harmonized Tariff Schedule of the United States relating to the textile and apparel rules of origin for the Dominican Republic-Central America-United States Free Trade Agreement, to approve the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for others purposes. (Aug. 10, 2012; 126 Stat. 1274)

S. 270/P.L. 112-164

La Pine Land Conveyance Act (Aug. 10, 2012; 126 Stat. 1279)

S. 271/P.L. 112-165

Wallowa Forest Service Compound Conveyance Act (Aug. 10, 2012; 126 Stat. 1281)

S. 679/P.L. 112-166

Presidential Appointment Efficiency and Streamlining Act of 2011 (Aug. 10, 2012; 126 Stat. 1283)

S. 739/P.L. 112-167

To authorize the Architect of the Capitol to establish battery

recharging stations for privately owned vehicles in parking areas under the jurisdiction of the Senate at no net cost to the Federal Government. (Aug. 10, 2012; 126 Stat. 1296)

S. 1959/P.L. 112-168

Haqqani Network Terrorist Designation Act of 2012 (Aug. 10, 2012; 126 Stat. 1299)

S. 3363/P.L. 112-169

To provide for the use of National Infantry Museum and Soldier Center Commemorative Coin surcharges, and for other purposes. (Aug. 10, 2012; 126 Stat. 1302)

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