FEDERAL REGISTER

Vol. 76 Tuesday,

No. 100 May 24, 2011

Pages 29989–30244

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Printing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpo@custhelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 76 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

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.
2. The relationship between the Federal Register and Code of Federal Regulations.
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, June 14, 2011
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

Contents

Federal Register

Vol. 76, No. 100

Tuesday, May 24, 2011

Editorial Note: Administrative Order, Continuation of the National Emergency With Respect to the Stabilization of Iraq appearing at 76 FR 29141 was published in the printed version of the **Federal Register** for Thursday, May 19, 2011, but was inadvertently omitted from the Table of Contents of the **Federal Register.**

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 76, No. 100
Tuesday, May 24, 2011

Presidential Documents

Title 3—

The President

Proclamation 8678 of May 18, 2011

National Maritime Day, 2011

By the President of the United States of America

A Proclamation

In times of peace or war, the civilians serving in the United States Merchant Marine have helped keep our Nation safe and prosperous. We depend on these men and women serving on our ships and tugs, in our ports and shipyards, close to home or far at sea, to connect businesses, service members, and citizens around the world. On National Maritime Day, we honor their invaluable contributions to America's economic strength and security.

On May 22, 1819, the *SS Savannah* completed the first successful voyage by a steam powered ship across the Atlantic, shepherding in a new age of maritime travel and transport. By the 20th century, the United States maritime trade was booming, fostering exchanges across the world and aiding our military at war. During World War II, Merchant Marines were critical in providing necessary supplies and services to troops abroad, while suffering an extraordinarily high death rate. Hundreds of merchant ships fell to enemy action, and nearly one in thirty mariners did not return home.

United States flag vessels and those who operate them continue to be an integral part of our military operations overseas. They support operations in Iraq and Afghanistan, as well as humanitarian aid missions and disaster relief efforts. Without the steadfast commitment of our mariners, our Nation would not be as prepared to deal with unforeseen events, conflicts, or crises. Their bravery and valor make our waterways safer and more efficient every day.

Today, our maritime industry is a valuable source of skilled employment for American workers, contributing billions of dollars to our economy. It is also a critical part of our transportation system. Last year, my Administration implemented "America's Marine Highway Program," an effort that enables American businesses to participate in improving the safety and environmental sustainability of our waterways. Our mariners' continued work is helping American industry remain competitive in the global economy, pushing us toward a more prosperous and free 21st century.

The Congress, by a joint resolution approved May 20, 1933, has designated May 22 of each year as "National Maritime Day," and has authorized and requested the President to issue annually a proclamation calling for its appropriate observance.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 22, 2011, as National Maritime Day. I call upon the people of the United States to mark this observance and to display the flag of the United States at their homes and in their communities. I also request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of May, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2011–12982
Filed 5–23–11; 8:45 am]
Billing code 3195–W1–P

Rules and Regulations

Federal Register
Vol. 76, No. 100
Tuesday, May 24, 2011

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. APHIS–2009–0067]

RIN 0579–AD18

Live Goats and Swine for Export; Removal of Certain Testing Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the livestock exportation regulations to eliminate the requirement for pre-export tuberculosis and brucellosis testing of goats and breeding swine intended for export to countries that do not require such tests. This action will facilitate the exportation of goats and breeding swine by eliminating the need to conduct pre-export tuberculosis and brucellosis testing when the receiving country does not require such testing.

DATES: *Effective Date:* May 24, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Antonio Ramirez, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. Section 91.6 requires that goats intended for exportation be tested for tuberculosis and, for some goats, brucellosis prior to export. Section 91.9 requires that breeding swine intended for exportation be tested for brucellosis prior to export.

Some countries do not require that goats and breeding swine be tested for tuberculosis and brucellosis prior to export. Even in such cases, though, our regulations require that such testing be conducted. Thus, these requirements can create an unnecessary burden for producers when testing is not required to satisfy the import regulations of the country to which they are exporting goats and breeding swine.

On September 17, 2010, we published in the **Federal Register** (75 FR 56912–56914, Docket No. APHIS–2009–0067) a proposed rule [1] to amend the livestock exportation regulations to eliminate the requirement for pre-export tuberculosis and brucellosis testing of goats and breeding swine intended for export to countries that do not require such tests. In our proposal, we discussed how this action will relieve unnecessary burdens for producers when testing is not required to satisfy the importation regulations of the country to which they are exporting goats and breeding swine.

In this final rule, we are making a technical amendment to the citation to paragraph (a)(1) in § 91.6(a)(4)(iii). Paragraph (a)(4)(iii) should now read that brucellosis testing is not required for dairy and breeding goats exported to a country that does not require goats from the United Stated to be tested for brucellosis as described in paragraph (a)(2) of this section.

We solicited comments concerning the proposed rule for 60 days ending November 16, 2010. We received four comments by that date. They were from three private citizen and an exporter. Two commenters supported the proposed rule, and one commenter stated her opposition to the exportation of animals without raising any issues related to the proposed rule.

The remaining commenter opposed our decision to eliminate the testing requirement in instances when the receiving country does not require such testing because of the risk of spreading tuberculosis and brucellosis. The commenter suggested that the testing requirement be waived only for goats or breeding swine that come from a brucellosis-free State. The commenter also suggested that all goats and breeding swine that have not been tested for brucellosis before exportation be accompanied by a document warning the destination country that they have not been tested for brucellosis.

We note that all States are recognized as class free for *Brucella abortus,* the strain of brucellosis that would affect goats and as validated brucellosis free for *B. suis*, the strain of brucellosis that would affect swine.

We also note that our regulations require all exported goats and breeding swine to be accompanied by an origin health certificate that certifies that the animals were inspected 30 days prior to exportation. The health certificate must also include all test results, certifications, or other statements required by the destination country. If a country does not require goats and breeding swine be tested for tuberculosis or brucellosis prior to exportation, a document stating that no pre-export test has occurred would not be necessary.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule with changes discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule eliminates the requirement for pre-export tuberculosis and brucellosis testing of goats and breeding swine intended for export to countries that do not require such tests, thus reducing the burden for producers when exporting goats and breeding swine. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

We have prepared an economic analysis for this action. The economic analysis is posted with this final rule on the Regulations.gov Web site (see

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0067.*

ADDRESSES above for instructions for accessing Regulations.gov) and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

The analysis identifies live goat and swine exporters as the small entities most likely to be affected by this action, and considers the costs associated with the elimination of tuberculosis and brucellosis testing requirements for goats and swine being exported to countries that do require such tests. Based on the information presented in the analysis, we expect that the goat and swine wholesale trading industry will experience a reduction in compliance costs as a result of this action although the savings will be small in comparison to the value of the animals being exported.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Has no retroactive effect and (2) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 91 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 19 U.S.C. 1644a(c); 21 U.S.C. 136, 136a, and 618; 46 U.S.C. 3901 and 3902; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 91.6, paragraph (a)(4) is revised to read as follows:

§ 91.6 Goats.

(a) * * *

(4) *Exemptions.* (i) Goats exported for immediate slaughter need not comply with the requirements of paragraphs (a)(1), (a)(2), (a)(3), and (a)(5) of this section.

(ii) Tuberculosis testing is not required for goats over 1 month of age exported to a country that does not require goats from the United States to be tested for tuberculosis as described in paragraph (a)(1) of this section.

(iii) Brucellosis testing is not required for dairy and breeding goats exported to a country that does not require goats from the United Stated to be tested for brucellosis as described in paragraph (a)(2) of this section.

* * * * *

■ 3. Section 91.9 is revised to read as follows:

§ 91.9 Swine.

(a) No swine shall be exported if they were fed garbage at any time. The swine shall be accompanied by a certification from the owner stating that they were not fed garbage, and that any additions to the herd made within the 30 days immediately preceding the export shipment have been maintained isolated from the swine to be exported.

(b) Except as provided in paragraph (c) of this section, all breeding swine shall be tested for and show negative test results to brucellosis by a test prescribed in "Standard Agglutination Test Procedures for the Diagnosis of Brucellosis" or "Supplemental Test Procedures for the Diagnosis of Brucellosis." The test results shall be classified negative in accordance with the provisions prescribed in the Recommended Brucellosis Eradication Uniform Methods and Rules, chapter 2, part II, G, 1, 2, and 3.

(c) Breeding swine exported to a country that does not require breeding swine from the United States to be tested for brucellosis need not comply with the requirements of paragraph (b) of this section.

(Approved by the Office of Management and Budget under control number 0579–0020)

Done in Washington, DC, this 18th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–12758 Filed 5–23–11; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AC60

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

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, Agency, we, our) issues this final rule amending our regulations relating to lending and leasing limits (lending limits) and loan and lease concentration risk mitigation (risk mitigation) with a delayed effective date. The final rule lowers the limit on extensions of credit to a single borrower or lessee (collectively borrower) for each Farm Credit System (System) institution operating under title I or II of the Farm Credit Act of 1971, as amended (Act). This final rule also adds new regulations requiring all titles I, II, and III System institutions to adopt written policies to effectively identify, limit, measure and monitor their exposures to loan and lease (collectively loan) concentration risks. We expect this final rule will increase the safe and sound operation of System institutions by strengthening their risk mitigation practices and abilities to withstand volatile and negative changes in increasingly complex and integrated agricultural markets.

DATES: *Effective Date:* This regulation will be effective on July 1, 2012, provided either or both Houses of Congress are in session for at least 30 calendar days after publication of this regulation in the **Federal Register**. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Paul K. Gibbs, Senior Accountant, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or

Wendy R. Laguarda, Assistant General Counsel, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this final rule are to:

• Strengthen the safety and soundness of System institutions;

• Ensure the establishment of consistent, uniform and prudent loan

and lease concentration risk mitigation policies by System institutions;

- Ensure that all System lenders have robust methods to measure, limit and monitor reasonably foreseeable exposures to loan and lease concentration risks, including counterparty risks; and
- Strengthen the ability of System lenders to withstand volatile and negative changes in increasingly complex and integrated agricultural markets.

II. Background

On August 18, 2010, the FCA published a proposed rule (75 FR 50936) in the **Federal Register** to lower the lending limit on loans and leases to one borrower for all System institutions operating under title I or II of the Act from the current limit of 25 percent to a limit of no more than 15 percent of an institution's lending limit base. We further proposed that each title I, II and III System institution's board of directors adopt and ensure implementation of a written policy that would effectively measure, limit and monitor exposures to loan concentration risks.

III. Comments on the Proposed Rule and Our Responses

A. In General

The FCA received a total of six comment letters, including five from System associations and one from the System's trade association. No comment letters were received from outside of the System. In addition, FCA personnel had substantive oral communications during the comment period with the signatories of two of the comment letters regarding clarification of their written comments. These substantive discussions have been reduced to writing and placed in the public rulemaking file.

B. Specific Comments and Responses on the Proposal To Reduce the Lending Limit From 25 Percent to 15 Percent

1. Agreement With the Proposal

A few commenters agreed with the proposal to reduce the lending limit from 25 percent to 15 percent. One commenter also indicated that it does not anticipate that the lower limit will negatively affect its current lending and leasing practices.

In addition, one commenter recommended that there be consistent limits for titles I and II lenders as well as for title III lenders. This commenter explained that titles I and II lenders also provide financing for cooperatives and would be at a competitive disadvantage with CoBank, ACB (CoBank), the only title III lender in the System. While it is true that associations provide some financing directly to cooperatives, the overwhelming majority of lending to cooperatives by titles I and II lenders is made through CoBank. We fully support continuation of these risk-sharing arrangements, and believe that risk sharing among associations and their funding banks and/or CoBank will enable associations to continue to meet the credit needs of cooperatives, which choose to do business through their local association. We do not believe the 15-percent lending limit will change this business landscape, nor create a competitive disadvantage for titles I and II lenders. Further, as stated in the preamble to the proposed rule, we chose not to address the title III lending limits in this rulemaking due to the complexity of the issues and indicated that, should we decide to address title III lending limits in the future through a regulation amendment, we would do so in a separate rulemaking.

2. No Need To Lower the Limit

A few commenters questioned the need to lower the lending limit, stating that a lower limit was not the best solution to address unsafe lending practices. Rather than lower the limit for those institutions with a positive track record, these commenters advised the Agency to address the few problem institutions individually.

We believe that lowering the lending limit is an effective way to ensure that System institutions' lending practices do not result in unsafe concentrations of risk. Moreover, as stated in the proposed rule, the significant growth in System capital since the lending limit was last set in the early 1990s provides the System with significant lending capacity. Accordingly, the current 25-percent limit is no longer considered necessary or prudent.

Further, as stated in the proposed rule, a majority of titles I and II lenders already have internal lending limits that are more aligned with the 15-percent limit the Agency is now imposing. Therefore, those System institutions with a positive track record should not find compliance with the 15-percent limit onerous. The Agency also believes that imposing such limits by regulation rather than on individual institutions best meets due process principles of fairness, consistency, and transparency, as well as providing an opportunity to be heard through the public comment process.

One commenter also stated that there was no need to lower the lending limits because its funding bank already enforces a 20-percent hold limit. The fact that System banks are enforcing limits below the current 25-percent limit evidences their recognition that the current limit is too high and provides additional support for the new limit of 15 percent.

One commenter questioned the need to lower the lending limit since risk may be mitigated using Farm Service Agency guarantees, farm program subsidies and crop insurance. We note that loans or portions of loans that have a Government guarantee, as well as loans fully secured by obligations fully guaranteed by the United States Government, are exempt from the computation of loans to one borrower under § 614.4358 of the lending limit regulation. Hence, the fact that a System institution may mitigate risk using such guarantees has no bearing on loans subject to the lending limit.

3. Impact on Competitiveness

One commenter indicated that lowering the lending limit to 15 percent would put System institutions at a competitive disadvantage with National banks, which may loan up to 15 percent plus an additional 10 percent if the loan is fully secured by readily marketable collateral such as livestock, dairy cattle and warehouse receipts. Similarly, this commenter indicated that System institutions would be at a competitive disadvantage with State-chartered banks because such banks also have higher lending limits.

The FCA has carefully considered whether the 15-percent limit would put System lenders at a competitive disadvantage with National and State-chartered banks and have concluded it will not for all of the following reasons. First, an overwhelming majority of titles I and II lenders currently have in-house lending limits of 20, 15 and even 10 percent. The 15-percent limit, therefore, should not have a significant impact on the competitive position of the majority of System institutions with regard to National and State banks. We also note that these self-imposed limits have not resulted in a reduction in the System's market share of agricultural lending—a market share that has, in fact, grown over the last decade or so.

Second, our review of lending limit regulations for State-chartered banks indicates that such limits vary widely. However, like National banks, in most case loans with higher lending limits made by State-chartered banks must be fully secured by readily marketable collateral.

The FCA also considered, but did not adopt exceptions to the rule based on the type and quantity of collateral supporting the loan. The concern over

the time and difficulty of administering such exceptions outweighed any potential benefits that might result for System borrowers. Furthermore, the FCA does not wish to encourage System institutions to place undue reliance upon collateral as a basis for extending credit above the 15-percent limit.

The Agency also believes that comparisons with National and State-chartered banks are of limited value given that the System as a single-industry agricultural lender, a cooperative and a Government-Sponsored Enterprise with public mission responsibilities, operates very differently in many respects from other Federal or State-chartered lending institutions. Given the unique and public purpose role of the System, the Agency has an obligation to ensure its safety and soundness so that the System remains a dependable and adequate source of credit to American farmers and ranchers. We also believe the 15-percent lending limit appropriately addresses the Agency's concerns over the volatility of agricultural lending as well as single-credit and industry concentrations. For all the foregoing reasons, we believe the 15-percent limit will enhance the overall strength of each System institution, thus leveraging the System's ability to compete even more successfully with National and State-chartered banks for a share of the agricultural credit market.

Another commenter stated that the lower limits would delay the loan approval process since more than one lending institution would be involved in a loan, further reducing an institution's competitiveness in the marketplace. FCA acknowledges that a longer loan approval process may result from risk-sharing agreements (i.e., participations, capital/asset pools, guarantees, etc.). However, we also believe that the additional due diligence performed by the other lenders in these risk-sharing agreements will lead to better credit decisions and a stronger loan portfolio in each System institution—benefits that will far outweigh any inconveniences resulting from such agreements. Further, the delayed effective date of this rule will give System institutions time to forge new relationships with other institutions so that procedures can be in place for approving such loans without significant delay.

4. Impact on Future Earnings

One commenter asserted that the lower lending limit would cause a substantial reduction in future earnings because larger loans represent its association's best quality, least risky and most profitable segment of its loan portfolio.

While large loans may be of sound quality and profitable, such loans have a greater impact on the viability of an institution should they deteriorate. It is the Agency's belief that a diversified loan portfolio that serves all eligible borrowers, both large and small, is one of the best ways to ensure an institution's stability.

Further, earning streams need not suffer, nor should any potential loans be forced out of the System solely on the basis of this final regulation. Each System institution should use the time provided by the delayed effective date of this rule to develop risk-sharing agreements so it can continue to meet the needs of the borrowers in its territory.

Another commenter indicated that the lower lending limit would reduce earnings because an association would be forced to sell off high quality loans, resulting in a lower return on assets and equity along with a restricted ability to build capital. This commenter also believed that the lower limit would reduce net income, negatively affecting an association's efficiency performance as reflected in its gross and net operating rates and efficiency ratio.

Although a System institution may temporarily forego some earnings as a result of reducing the size of a loan it holds, any opportunity cost should be offset by its reduced exposure to concentration risk. Such concentration risk is a greater threat to the safety and soundness of a System institution than a temporary loss of earnings. In addition, lower concentration risk levels require less capital to buffer risk that may exist in a loan portfolio, thereby lowering the capital requirements of a System lender.

Finally, we note that all existing loans are grandfathered under the transition provisions of this regulation. Therefore, unless the terms of a loan are changed, rendering it a "new loan" under the rule that would need to comply with the 15-percent lending limit, System institutions will not be forced to sell off high quality loans. Further, the delayed effective date should give System institutions enough time to forge the necessary lending relationships to offset any anticipated negative income and performance results.

5. Effect on Patronage Distributions and Customer Service

Two commenters stated that the lower limits would result in a loss of patronage paid to borrowers because System institutions would be forced to sell more participations to lenders not paying patronage. One of these commenters asserted that a loss of patronage payments by an association would cause its borrowers to spread rumors about the financial troubles of the association, resulting in a negative image for the System throughout the community. One of these commenters also stated that the lower limit would unnecessarily hurt farmers and ranchers.

While one of the effects of the final regulation is expected to be the greater use of risk-sharing agreements, the FCA expects that those System institutions paying patronage will find like partners or, alternatively, partners that will agree to patronage. System lenders can use these risk-sharing agreements to manage risk while still receiving financial consideration in the form of patronage or loan fees from a loan sale. These agreements should mitigate any temporary impact from reducing the size of loan held by a lender, as the lender can still receive income without bearing the risk of loss from holding a larger portion of the loan principal or commitment.

We also believe that such risk-sharing activities will encourage additional market discipline in System institutions by requiring them to price loans appropriately in order to find willing lending partners. We believe that the added due diligence, diversity and market discipline that lending partners bring to a System institution's loan and patronage practices will strengthen System institutions, ensure their long-term safety and soundness and benefit, rather than hurt, the System's farmer and rancher borrowers.

6. Effect of Lower Limits on Smaller System Institutions

A few commenters stated that, while lower limits may be appropriate for larger System associations, they would cause hardships on smaller associations. These commenters were concerned that the lower lending limit would make it even more challenging for small associations to meet the capital demands of those borrowers with large farming and ranching operations. One commenter suggested that the Agency should consider making exceptions to the 15-percent limit for small associations or allowing the System funding banks to make such exceptions in their general financing agreements with their district associations. Alternatively, this commenter suggested allowing the funding banks to authorize an association's use of a higher lending limit, not to exceed 25 percent, subject to other credit factors such as the association's size and capital base.

The Agency is sensitive to the fact that the lower limit may initially be more of a burden on smaller System associations. In response to this concern, we are issuing this regulation with a delayed effective date of approximately 1 year to give all titles I and II lenders more time to establish participation, syndication, capital pooling or other risk-sharing agreements so that they may continue to serve the needs of the borrowers in their territories.

However, we also note, as stated in the preamble to the proposed regulation, that the substantial growth in the capital bases of titles I and II System institutions since the current lending limit was first promulgated, has given all System lenders, including the smaller ones, much greater capacity to meet the needs of large borrowers. It is also true that smaller System institutions are often more at risk from large loans that cease to perform since their capacity to absorb such losses is often not as great as in larger-sized institutions.

The FCA considered the commenters' suggestions for exceptions to the lending limit for smaller associations and also considered the following alternatives to address the issue:

- Establishing the lending limit at the greater of 15 percent or a specific dollar amount for smaller System institutions, or
- Permanently grandfathering existing loans (even when the terms of the loan change) held by smaller institutions with a higher lending limit percentage or based on a specified dollar amount.

We ultimately rejected all of these alternatives for several reasons, not the least of which is our continued belief that the 15-percent lending limit is necessary for the long-term safety and soundness of all System institutions, including and especially the smaller institutions. We also believe that making exceptions for smaller associations, either through the funding banks or by regulation, would be difficult to effectively administer and monitor, and could end up weakening rather than strengthening the smaller institutions. Finally, with the delayed effective date providing time for System institutions to establish additional risk-sharing agreements, we believe that all System institutions, including the smaller ones, will be able to continue to meet the mission of servicing the credit needs of the creditworthy, eligible borrowers in their respective territories.

Finally, one commenter stated that lowering the lending limit for the smallest System associations is not necessary because such institutions pose no risk to the System as a whole.

As the safety and soundness regulator, it is the FCA's duty to ensure the safe and sound operation of every System institution. It would be irresponsible for the Agency to ignore or permit an unsafe lending limit based on the notion that the System as a whole could absorb the insolvency of a small institution. Further, it is important to consider the disruption caused by the failure of an institution to its farmer and rancher borrowers, to the consequences on the institution's employees or members of the community, or to the fact that the continued viability of even the smallest System association is vital to achieving the mission of the System.

This same commenter indicated that the lower limit would reduce the System's diversity in business models, presumably by forcing the smaller associations to merge with larger associations. A reduction in the diversity of System business models does not necessarily accompany the further consolidation of the System. We believe that the most successful business models adapt to changes in the operating environment, which serves to strengthen the System.

Given the concern over the impact of the 15-percent lending limit on smaller associations, the Agency especially encourages each funding bank to carefully evaluate the lending limits imposed by its general financing agreements (GFA). It may be appropriate to maintain the GFA limit at the 15-percent level for smaller associations if the bank and associations determine that the 15-percent level is needed to adequately serve the needs of the borrowers in their respective territories. This analysis should be completed with regard to each particular association's lending capacity, history, expertise, etc., and the resulting risk to the funding bank.

7. Transition Period

One commenter indicated that the transition rule contained in § 614.4361 should be lengthened to allow System institutions sufficient time to develop risk-sharing agreements to conform new loans to the 15-percent lending limits without a loss of business or customers. The FCA agrees with the need to provide more time to System institutions to develop such agreements which is why, as mentioned earlier, this final rule is being issued with a delayed effective date, giving institutions approximately 1 year to comply with the rule's requirements.

Therefore, we are deleting proposed § 614.4361(c), which in the proposed rule would have given titles I and II System institutions 6 months from the effective date to comply with the new limits and would have given titles I, II and III System institutions 6 months from the effective date to comply with the new policy requirements.

C. Specific Comments and Responses on the Proposed Loan and Lease Concentration Risk Mitigation Policies

1. Agreement With the Proposal

Two commenters agreed with the requirement to adopt risk mitigation policies and recognized the need for all financial institutions to adhere to such policies. However, one of these commenters added that such policies will not, in and of themselves, protect the System without corresponding efforts from associations to responsibly manage portfolio risk. The FCA agrees with these comments and encourages each title I, II and III System institution's board of directors to adopt robust internal controls, such as reporting requirements and other accountability safeguards, so that the board remains engaged in ensuring that those policy authorities delegated to management are effectively carried out.

2. Need for the Regulation

One commenter indicated that it did not believe that the FCA has to change its regulations to require associations to set prudent lending limits.

The FCA believes that a regulation requiring a written risk mitigation policy is necessary since our current regulations do not impose lending limits based on specified risks in an institution's loan portfolio and practices. The policy required by this final rule focuses on the mitigation of risks caused by undue industry concentrations, counterparty risks, ineffective credit administration, inadequate due diligence practices, or other shortcomings that could be present in a System institution's lending practices. The recent stresses experienced by System institutions caused by downturns in the poultry, ethanol, hog and dairy industries underscore the need for such policies in System institutions.

This commenter also indicated that the FCA has sufficient enforcement powers to ensure safe and sound loan portfolio risk mitigation by System institutions and also reminded the FCA of Congress' previous instruction to eliminate all regulations that "are unnecessary, unduly burdensome or costly."

The risk mitigation policy required by this rule is intended to strengthen a

System institution's loan portfolio so that it can better withstand stresses experienced by a single borrower, industry sector or counterparty. The policy must set forth sound loan and lease concentration risk mitigation practices in order to *prevent* weak and unsound practices. In contrast, our enforcement authorities apply when a System institution (or other persons) engages, has engaged, or is about to engage in an unsafe or unsound practice in conducting the business of the institution. In addition, this commenter stated that the lower lending limits do not justify the need to regulate the specific content of an institution's lending policies, asserting that FCA's existing loan policy regulation at § 614.4150 already establishes the necessary regulatory framework for lending standards. In lieu of the regulations proposed by the FCA, this commenter suggests simply adding the phrase "effectively measure, limit and monitor exposures to concentration risk" to existing § 614.4150.

Section 614.4150 addresses requirements for prudent credit extension practices and underwriting standards for individual loans, but falls short of addressing concentration risks inherent in an institution's loan portfolio. Although some institutions have already established policies to address loan concentration risks, many have not. This final regulation is necessary to ensure that all System institutions adopt adequate risk mitigation policies. System institutions are free, however, to incorporate the requirements of this policy into their already existing lending policies.

For all the foregoing reasons, we believe that the establishment of a policy to mitigate loan concentration risks is necessary and will not be unduly burdensome or costly to System institutions.

3. Lack of Specificity in the Requirements for a Loan and Lease Concentration Risk Mitigation Policy

A few commenters thought that the risk mitigation policy was too vague, the risks mentioned would be too difficult to quantify, and the policy would not make the System safer, noting specifically that:

- The quantitative method(s) are not sufficiently defined and may unnecessarily limit the flexibility of System institutions seeking to facilitate credit opportunities for eligible and qualified System borrowers;
- Certain System institutions serve areas where particular agricultural industries dominate in their territories, resulting in unavoidable loan concentrations in their loan portfolios;
- Risks emanating from unique factors, such as dependence on off-farm income from a local manufacturing plant are difficult to effectively identify, measure, limit and monitor and are not susceptible to meaningful quantitative measures. Attempts to measure such risks could lead to arbitrary decisions that contradict the System's mission of making credit available to qualified farmers;
- The requirements of the policy could prevent System institutions from making loans to producers with a limited market for their farm products;
- The imposition of specific policy elements and quantitative methods is not appropriate for a regulation since each institution's territory, nature and scope of its activities and risk-bearing capacity is unique;
- The regulation provides no definition of the meaning of a "single-industry sector" so it is unclear how broadly or narrowly this phrase should be defined;
- It is neither practical, necessary, or realistic to create a meaningful quantitative method around what may be a limitless set of risk factors; and finally,
- The policy would not enhance the underlying safety and soundness of the System.

The FCA recognizes that there is no ideal uniform approach to a loan and lease concentration risk mitigation policy. For this reason, the regulation intentionally outlines only minimally required elements. It is up to each institution, based on the unique risks in its territory and risk-bearing capacity, to identify and define concentration risks so that they can be effectively mitigated. For these reasons, the regulation gives institutions wide latitude to define terms, such as "industry sectors" according to their best business judgment and based on the familiarity with the types of agriculture in their territories.

For those commenters expressing apprehension about which risk factors to identify, we have added language to the rule clarifying that quantitative methods need be established only for *significant* concentration risks that are *reasonably* foreseeable. We leave it to the discretion of each institution, using their experience in providing agricultural credit and their best business judgment, to determine which credit concentration risks are significant—that is, which risks have the most potential to lead to serious loss.

The discretion the rule gives to System institutions is intended to ensure that institutions adequately control risk without limiting their ability to continue being a steady source of credit to all eligible and creditworthy borrowers in their respective territories. The policy should not result in System institutions having to make arbitrary credit decisions or turn away qualified borrowers. Rather, the policy requires institutions to mitigate rather than deny those loan concentrations presenting significant and reasonably foreseeable risks. Concentration risks caused, for example, by territories with producers/borrowers that have limited agricultural markets or few agricultural sectors may be mitigated through one or more of the following options, including hold limits, an increase in capital, loss-sharing agreements or other risk mitigation tools.

Consistent with the language in the preamble to the proposed regulations, we have deleted the reference to direct lender from the regulation text to make clear that the loan and lease concentration risk mitigation policy requirements also apply to title III System institutions.

4. Period for Adopting the New Loan and Lease Concentration Risk Mitigation Policy

One commenter encouraged the FCA to carefully consider the difficulty System institutions are likely to have in implementing the proposed changes. This commenter also indicated that the 6-month period for adopting the risk mitigation policy would not provide sufficient time for System boards of directors to properly evaluate and adopt policies to address those concentrations in their current portfolios that are not currently measured. As discussed in detail above, the final regulation is being issued with a delayed effective date, giving all System institutions approximately a 1-year period to adopt such policies.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

■ 1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart J—Lending and Leasing Limits

§ 614.4352 [Amended]

■ 2. Section 614.4352 is amended by:
■ a. Removing the comma after the word "borrower" and removing the number "25" and adding in its place, the number "15" in paragraph (a);
■ b. Removing the comma after the word "Act" and removing "exceeds 25" and adding in its place "exceed 15" in paragraph (b)(1); and
■ c. Removing the comma after the word "Act" and removing "exceeds" and adding in its place "exceed" in paragraph (b)(2).

§ 614.4353 [Amended]

■ 3. Section 614.4353 is amended by:
■ a. Adding the words "direct lender" after the word "No";
■ b. Removing the comma after the word "borrower"; and
■ c. Removing "exceeds 25" and adding in its place "exceed 15".

§ 614.4354 [Removed]

■ 4. Section 614.4354 is removed.

§ 614.4356 [Amended]

■ 5. Section 614.4356 is amended by removing the number "25" and adding in its place, the number "15".

■ 6. Section 614.4362 is added to subpart J to read as follows:

§ 614.4362 Loan and lease concentration risk mitigation policy.

The board of directors of each title I, II, and III System institution must adopt and ensure implementation of a written policy to effectively measure, limit and monitor exposures to concentration risks resulting from the institution's lending and leasing activities.

(a) *Policy elements.* The policy must include:

(1) A purpose and objective;

(2) Clearly defined and consistently used terms;

(3) Quantitative methods to measure and limit identified exposures to significant and reasonably foreseeable loan and lease concentration risks (as set forth in paragraph (b) of this section); and

(4) Internal controls that delineate authorities delegated to management, authorities retained by the board, and a process for addressing exceptions and reporting requirements.

(b) *Quantitative methods.* (1) At a minimum, the quantitative methods included in the policy must measure and limit identified exposures to significant and reasonably foreseeable concentration risks emanating from:

(i) A single borrower;

(ii) A single-industry sector;

(iii) A single counterparty; or

(iv) Other lending activities unique to the institution because of its territory, the nature and scope of its activities and its risk-bearing capacity.

(2) In determining concentration limits, the policy must consider other risk factors that could identify significant and reasonably foreseeable loan and lease losses. Such risk factors could include borrower risk ratings, the institution's relationship with the borrower, the borrower's knowledge and experience, loan structure and purpose, type or location of collateral (including loss given default ratings), loans to emerging industries or industries outside of an institution's area of expertise, out-of-territory loans, counterparties, or weaknesses in due diligence practices.

Dated: May 19, 2011.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2011–12771 Filed 5–23–11; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0436; Directorate Identifier 2009–NM–230–AD; Amendment 39–16643; AD 2011–07–06]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to the products listed above. The service information reference in paragraph (g)(7) in the Actions section of the AD is incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: This final rule is effective May 24, 2011. The effective date for AD 2011–07–06 remains May 6, 2011.

ADDRESSES: 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: Wing Chan, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531; e-mail: *wing.chan@faa.gov.*

SUPPLEMENTARY INFORMATION: Airworthiness Directive 2011–07–06, amendment 39–16643 (76 FR 18024, April 1, 2011), currently requires revising the Limitations and Normal Procedures sections of the airplane flight manual; revising the maintenance program for certain airplanes by incorporating certain inspections; replacing certain data concentrator units (DCUs) with modified DCUs, and, if

applicable, modifying the configuration strapping units, installing the outboard low-heat detection switches and wing A/ICE box assembly and its associated wires; and activating the outboard low-heat detection switches; for Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes.

In the AD as published, the reference to Bombardier Service Bulletin 601R–30–034, dated November 19, 2007, in paragraph (g)(7) of the AD is incorrect. The reference to the Bombardier Service Bulletin should read Bombardier Service Bulletin 601R–31–034, dated November 19, 2007.

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**.

The effective date of this AD remains May 6, 2011.

Correction of Regulatory Text

§ 39.13 [Corrected]

■ In the **Federal Register** of April 1, 2011, on page 18028, in the first column, paragraph (g)(7) of AD 2011–07–06 is corrected to read as follows:

* * * * *

(7) Replacing DCUs P/N 622–9820–007, 622–9820–008, or 622–9820–009 with modified DCUs having P/N 622–9820–010, and modifying CSUs, are also acceptable for compliance with the requirements of paragraph (g)(3) of this AD if done before the effective date of this AD, in accordance with Accomplishment Instructions of Bombardier Service Bulletin 601R–31–034, dated November 19, 2007.

* * * * *

Issued in Renton, Washington, on May 13, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–12587 Filed 5–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 110502271–1278–01]

RIN 0694–AF24

Removal and Modifications for Persons Listed Under Russia on the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Export Administration Regulations (EAR) by removing one and revising two Russian entries on the Entity List (Supplement No. 4 to Part 744). This final rule removes the Federal Atomic Power of Russia (Rusatom) (now known as the Russian State Corporation of Atomic Energy (Rosatom)) entry from the Entity List and adds language clarifying that both the All-Russian Scientific Research Institute of Technical Physics (VNIITF) and the All-Russian Scientific Research Institute of Experimental Physics (VNIIEF), which are Rosatom components, remain on the Entity List. In addition, this rule adds additional aliases and revises some of the existing aliases for the two Russian entries that are being retained on the Entity List. These changes will better inform exporters, reexporters, and transferors of the scope of these Entity List-based license requirements.

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to parties identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of license exceptions in such transactions is limited.

DATES: *Effective Date:* This rule is effective May 24, 2011.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, E-mail: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that the availability of license exceptions in such transactions is limited. Entities are placed on the Entity List on the basis of certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, when appropriate, the Treasury, makes all decisions to make additions to, removals from and other changes to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote. The Departments represented on the ERC approved these changes to the Entity List.

Entity List Decisions

In recognition of the bilateral partnership between the United States and Russia, a policy decision was made by the Departments represented on the ERC to clarify the Russian entries on the Entity List by removing one and revising two Russian entities listed on the Entity List. The decision implemented by this final rule includes removing the Federal Atomic Power of Russia (Rusatom) (which is now known as the Russian State Corporation of Atomic Energy (Rosatom)) as an individual entry on the Entity List and adding language to clarify that two specified Russian entries (*i.e.,* the All-Russian Scientific Research Institute of Technical Physics (VNIITF) and the All-Russian Scientific Research Institute of Experimental Physics (VNIIEF)) which are Rosatom components, are both remaining on the Entity List. These revisions further clarify that VNIITF and VNIIEF are the only Rosatom components remaining on the Entity List. This language is being added to clarify that neither Rosatom at locations outside of Snezhinsk and Sarov nor any of its components or subsidiaries located outside of Snezhinsk and Sarov are subject to the Entity List's supplemental licensing requirements and policies.

In addition, this rule adds other aliases and revises some of the existing aliases for the two Russian entries that are being retained on the Entity List. These changes will better inform exporters, reexporters, and transferors of the scope of these Entity List-based license requirements.

A. Removal From the Entity List

This rule implements a policy decision made by the Departments represented on the ERC to remove one Russian entity from the Entity List. Specifically, this rule removes the Federal Atomic Power of Russia (Rusatom), which is now known as the Russian State Corporation of Atomic Energy (Rosatom) from the Entity List. However, VNIITF and VNIIEF will remain on the Entity List. Moreover, this rule adds and revises particular aliases of VNIITF and VNIIEF to the Entity List to better assist exporters, reexporters and transferors in identifying these two entities on the Entity List.

This rule removes the following person located in Russia from the Entity List:

Russia

(1) *Federal Atomic Power of Russia (Rusatom) (any entities, institutes, or centers associated with),* a.k.a. the following three aliases:

—Federal Atomic Agency (FAAE);
—MINATOM; *and*
—Ministry of Atomic Power and Industry (MAPI).
Located in either Snezhinsk or Kremlev (Sarov).

The removal of this entity from the Entity List eliminates the existing license requirements in Supplement No. 4 to part 744 for exports, reexports and transfers (in-country) to this entity, although those licensing requirements remain in place for VNIITF and VNIIEF. Moreover, the removal of this entity from the Entity List does not relieve persons of other obligations under part 744 of the EAR or under other parts of the EAR. Neither the removal of an entity from the Entity List nor the removal of Entity List-based license requirements relieves persons of their obligations under General Prohibition 5 in section 736.2(b)(5) of the EAR which provides that, "you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR." Nor do these removals relieve persons of their obligation to apply for export, reexport or in-country transfer licenses required by other provisions of the EAR. BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, "BIS's 'Know Your Customer' Guidance and Red Flags," when persons are involved in transactions that are subject to the EAR.

B. Modifications to the Entity List

As noted above, this rule is removing the Russian entity Rusatom, which is now known as Rosatom, from the Entity List. However, and also as noted above, because Rosatom has components (VNIITF and VNIIEF) located in Snezhinsk and Sarov that will remain on the Entity List, this final rule specifies that VNIITF and VNIIEF will remain on the Entity List.

In addition, the changes in the final rule include adding additional aliases and revising some of the existing aliases for VNIITF and VNIIEF to better assist exporters, reexporters and transferors in identifying these two entities on the Entity List. Specifically, this rule revises the following two persons on the Entity List:

Note: The asterisks below indicate where revisions are being made to these two Russian entries on the Entity List.

Russia

(1) **All-Russian Scientific Research Institute of Technical Physics (VNIITF),* a.k.a., the following eight aliases:

*—Vserossiyskiy Nauchno-Issledovatelskiy Institut Tekhnicheskoy Fiziki;
*—Russian Federal Nuclear Center-VNIITF (RFNC–VNIITF);
*—Kasli Nuclear Weapons Development Center;
*—Institute of Technical Physics;
*—Zababakhin Institute;
*—ARITP (All Russian Institute for Technical Physics);
—Federal State Unitary Enterprise Russian Federal Nuclear Center—Academician E.I. Zababkhin All-Russian Scientific Research Institute of Technical Physics (FGUPRFYaTs–VNIITF)
—Chelyabinsk—70,
(Address: P.O. Box 245, 456770, Snezhinsk, Chelyabinsk Region Russia); and
*Any nuclear-related entities, institutes or centers located in Snezhinsk.

(2) **All-Russian Scientific Research Institute of Experimental Physics (VNIIEF),* a.k.a., the following nine aliases:

*—Vserossiyskiy Nauchno-Issledovatelskiy Institut Eksperimentalnoy Fiziki;
*—Russian Federal Nuclear Center-VNIIEF (RFNC–VNIIEF);
*—Institute of Experimental Physics;
*—ARIEP (All Russian Institute for Experimental Physics);
—Khariton Institute;
—Sarov Nuclear Weapons Plant;
—Avangard Electromechanical Plant;
—Federal State Unitary Enterprise Russian Federal Nuclear Center—All Russian Scientific Research Institute of Experimental Physics (FGUPRFNCs VNIIEF)
—Arzamas—16,
(Address: 37 Mira Ave. Sarov, Nizhny Novgorod Region, 607188 Russia); and
* Any nuclear-related entities, institutes or centers located in Sarov (Kremlev).

A BIS license is required for the export, reexport or transfer (in-country) of any item subject to the EAR to the persons described above, including any transaction in which this listed entity will act as purchaser, intermediate consignee, ultimate consignee, or end-user of the items. This listing of these entities also prohibits the use of license exceptions (*see* part 740 of the EAR) for exports, reexports and transfers (in-country) of items subject to the EAR involving this entity.

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

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Total burden hours associated with the Paperwork Reduction Act and Office and Management and Budget control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed

rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). The U.S. Government's original basis for adding the entities affected by this rule to the Entity List was the entities' involvement in activities contrary to U.S. national security or foreign policy interests. BIS implements this rule to further protect U.S. national security and foreign policy interests by preventing items from being exported, reexported or transferred (in-country) to these persons listed on the Entity List by making clarifications to the existing entries to inform exporters, reexporters and persons making transfers (in-country) of the intended scope of the license requirements for these listed persons. This action does this by clarifying the listings of VNIITF and VNIIEF, clarifying the names of existing aliases, and adding aliases for the listed persons. If this rule were delayed to allow for notice and comment and a delay in effective date, there is a chance that certain exporters, reexporters and persons making transfers (in-country) to these listed persons may inadvertently export, reexport or transfer (in-country) to a listed person on the Entity List because the exporter, reexporter or person making the transfer (in-country) did not realize the listed person was subject to the Entity List-based license requirement because of perceived ambiguity regarding the listed person, such as a perceived ambiguity resulting from the use of an alias by a listed person. There is also a chance an exporter, reexporter or person making a transfer (in-country) may turn away a potential export, reexport, or transfer (in-country) because the customer incorrectly appeared to be within the scope of a listed person on the Entity List, thereby harming U.S. economic interests. The clarification of language provided in this rule may make clear that the person was not subject to an Entity List-based license requirement. For these reasons there is a public interest that these changes be implemented as a final action. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010); Notice of January 13, 2011, 76 FR 3009 (January 18, 2011).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. By removing under Russia, the Russian entity, Federal Atomic Power of Russia (Rusatom); and

■ b. By revising, under Russia, the following two Russian entities: All-Russian Scientific Research Institute of Technical Physics (VNIITF) and All-Russian Scientific Research Institute of Experimental Physics (VNIIEF).

The revisions read as follows:

Supplement No. 4 to Part 744—Entity List

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* *	*	* *	*
RUSSIA	All-Russian Scientific Research Institute of Technical Physics (VNIITF), a.k.a., the following eight aliases: —Vserossiyskiy Nauchno-Issledovatelskiy Institut Tekhnicheskoy Fiziki; —Russian Federal Nuclear Center-VNIITF (RFNC–VNIITF); —Kasli Nuclear Weapons Development Center; —Institute of Technical Physics; —Zababakhin Institute; —ARITP (All Russian Institute for Technical Physics); —Federal State Unitary Enterprise Russian Federal Nuclear Center—Academician E.I. Zababkhin All-Russian Scientific Research Institute of Technical Physics (FGUPRFYaTs-VNIITF) —Chelyabinsk-70, (Address: P.O. Box 245, 456770, Snezhinsk, Chelyabinsk Region Russia); *and* any nuclear-related entities, institutes, or centers located in Snezhinsk.	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97 66 FR 24267, 5/14/01 75 FR 78883, 12/17/10. ***76 FR [INSERT FR PAGE NUMBER] 5/24/11.
	All-Russian Scientific Research Institute of Experimental Physics (VNIIEF), a.k.a., the following nine aliases:	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97 66 FR 24267, 5/14/01 75 FR 78883, 12/17/10.

Country	Entity	License requirement	License review policy	Federal Register citation
	—Vserossiyskiy Nauchno-Issledovatelskiy Institut Eksperimentalnoy Fiziki; —Russian Federal Nuclear Center-VNIIEF (RFNC–VNIIEF); —Institute of Experimental Physics; —ARIEP (All Russian Institute for Experimental Physics); —Khariton Institute; —Sarov Nuclear Weapons Plant; —Avangard Electromechanical Plant; —Federal State Unitary Enterprise Russian Federal Nuclear Center—All Russian Scientific Research Institute of Experimental Physics (FGUPRFNCs VNIIEF) —Arzamas-16, (Address: 37 Mira Ave. Sarov, Nizhny Novgorod Region, 607188 Russia); and any nuclear-related entities, institutes or centers located in Sarov (Kremlev)			***76 FR [INSERT FR PAGE NUMBER], 5/24/11.
*	* * * * * *			

Dated: May 19, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–12803 Filed 5–23–11; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF STATE

22 CFR Part 126

RIN 1400–AC83

[Public Notice 7466]

Amendment to the International Traffic in Arms Regulations: Libya

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to update the policy regarding Libya to reflect the United Nations Security Council arms embargoes adopted in February and March.

DATES: *Effective Date:* This rule is effective May 24, 2011.

FOR FURTHER INFORMATION CONTACT: Nicholas Memos, Office of Defense Trade Controls Policy, Department of State, by *telephone:* (202) 663–2804; *fax:* (202) 261–8199; or *e-mail: memosni@state.gov. Attn:* Part 126, Libya.

SUPPLEMENTARY INFORMATION: On February 26, 2011, the United Nations Security Council adopted Resolution 1970, paragraph 9 of which provides that U.N. member states shall immediately take the necessary measures to prevent the sale, supply or transfer of arms and related materiel of all types to the Libyan Arab Jamahiriya, with certain exceptions. Additionally, on March 17, 2011, the U.N. Security Council adopted Resolution 1973, paragraph 4 of which authorizes member states to take all necessary measures, notwithstanding the arms embargo established by paragraph 9 of Resolution 1970, to protect civilians and civilian populated areas under threat of attack in Libya. This rulemaking implements the Security Council's actions within the ITAR by adding Libya to § 126.1(c) and revising the previous policy on Libya contained in § 126.1(k) to announce a policy of denial for all requests for licenses or other approvals to export or otherwise transfer defense articles and services to Libya, except where not prohibited under UNSC embargo and determined to be in the interests of the national security and foreign policy of the United States.

Regulatory Analysis and Notices

Administrative Procedure Act

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

Regulatory Flexibility Act

Since this amendment is not subject to the notice-and-comment procedures of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

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

Executive Order 13175

The Department has determined that this rule will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rule.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Orders 12372 and 13132

This amendment will not have substantial direct effects on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Orders 12866 and 13563

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. Because this rulemaking concerns a foreign affairs function of the United States, the Department of State has determined that public participation in this rulemaking under Section 2 of Executive Order 13563 is not required.

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

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

PART 126—GENERAL POLICIES AND PROVISIONS

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

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

■ 2. Section 126.1 is amended by revising paragraphs (c) and (k) to read as follows:

§ 126.1 Prohibited exports and sales to certain countries.

* * * * *

(c) *Exports and sales prohibited by United Nations Security Council embargoes.* Whenever the United Nations Security Council mandates an arms embargo, all transactions that are prohibited by the embargo and that involve U.S. persons (*see* § 120.15 of this chapter) anywhere, or any person in the United States, and defense articles or services of a type enumerated on the United States Munitions List (22 CFR part 121), irrespective of origin, are prohibited under the ITAR for the duration of the embargo, unless the Department of State publishes a notice in the **Federal Register** specifying different measures. This would include, but is not limited to, transactions involving trade by U.S. persons who are located inside or outside of the United States in defense articles or services of U.S. or foreign origin that are located inside or outside of the United States. United Nations Arms Embargoes include, but are not necessarily limited to, the following countries:

(1) Cote d'Ivoire.

(2) Democratic Republic of Congo (see also paragraph (i) of this section).

(3) Iraq.

(4) Iran.

(5) Lebanon.

(6) Liberia.

(7) Libya (see also paragraph (k) of this section).

(8) North Korea.

(9) Sierra Leone.

(10) Somalia.

(11) Sudan.

* * * * *

(k) *Libya.* It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Libya, except where it determines, upon case-by-case review, that the transaction (or activity) is not prohibited under applicable U.N. Security Council resolutions and that the transaction (or activity) is in furtherance of the national security and foreign policy of the United States.

* * * * *

Dated: May 17, 2011.

Ellen O. Tauscher,

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

[FR Doc. 2011–12621 Filed 5–23–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2010–0005; T.D. TTB–93; Ref: Notice No. 108]

RIN 1513–AB55

Establishment of the Antelope Valley of the California High Desert Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the 665-square mile "Antelope Valley of the California High Desert" American viticultural area in Los Angeles and Kern Counties, California. The Alcohol and Tobacco Tax and Trade Bureau designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Date:* June 23, 2011.

FOR FURTHER INFORMATION CONTACT: Elisabeth C. Kann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G St., NW., Room 200E, Washington, DC 20220; phone 202–453–2002.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines

a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographic features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Antelope Valley of the California High Desert Petition

Mr. Ralph Jens Carter, on behalf of the Antelope Valley Winegrowers Association, submitted a petition proposing to establish the Antelope Valley of the California High Desert viticultural area. The proposed viticultural area covers 665 square miles, and lies in inland southern California, approximately 50 miles north of the Los Angeles metropolitan area. TTB notes that the proposed viticultural area is not within, does not contain, and does not overlap any existing or currently proposed viticultural area. In 2007, the proposed viticultural area included 128 planted acres in 16 commercial vineyards, and 2 bonded wineries, according to a listing in the petition exhibits.

The distinguishing features of the proposed Antelope Valley of the California High Desert viticultural area are climate, geology, geography, and soils, according to the petition. The Antelope Valley is surrounded by mountains on three sides and by a desert on the other side; it has an arid climate, desert soils, and a valley geomorphology. The evidence submitted in support of establishing the proposed viticultural area is summarized below.

History of Agriculture and Viticulture in the Antelope Valley

For an estimated 11,000 years, various cultures have populated the Antelope Valley region, according to the petitioner. Native American tribes, traveling north from what is now Arizona and New Mexico, used the valley as a trade route.

In the 1880s and early 1890s, Antelope Valley had ample rainfall and available surface water for farming. When settlers needed irrigation for farming, they initially used water from mountain streams, but eventually they dug wells into underground water reservoirs.

The petition states that early viticulture in the Antelope Valley area consisted of two growers in Lancaster ("Directory of the Grape Growers and Winemakers in California," Compiled by Clarence J. Wetmore, Secretary of the Board of State Viticulture Commissioners, 1888). By 1893, viticulture in the area grew to 239 acres of vines, 6.5 acres of wine grapes, and 8 growers ("Vineyards of Southern California," E.C. Bichowsky, California Board of State Viticultural Commissioners, 1893).

A drought in 1894 and Prohibition (1919–1933) ended viticulture in Antelope Valley, according to the petition. However, in the early 20th century, water supplies for general farming in the valley became dependable as gasoline engines and electric pumps came into use. In 1913, the Los Angeles Aqueduct, extending from Owens Valley in southeastern California to Los Angeles, was built. Bordering the north side of Antelope Valley, the Los Angeles Aqueduct also helped revive the agricultural economy in the valley. Viticulture restarted in 1981, when Steve Godde planted 5 acres to grapevines on the west side of the valley.

Name Evidence

The name "Antelope Valley of the California High Desert" combines the name recognition of the valley and the California high desert area into a single geographic descriptor, according to the petitioner. The modifier "California High Desert" distinguishes the proposed viticultural area from other places in California and elsewhere also called "Antelope Valley;" "California High Desert" is commonly used by area inhabitants to distinguish and identify the Antelope Valley located in the high desert in southeastern California. According to the Geographic Names Information System (GNIS) maintained by the USGS, the "Antelope Valley" name identifies 35 geographical locations in 10 States, including 9 locations in California.

The petition contains several documents and citations that refer to the "Antelope Valley" in Los Angeles and Kern Counties, as follows: The USGS 1974 photorevised Little Buttes Quadrangle map; the 1977 Geologic Map of California, compiled by Charles W. Jennings; the 2005 DeLorme Southern and Central California Atlas and Gazetteer; the California Air Resources Board Web site; and the 2001 edition California State Automobile Association (CSAA) Coast and Valley map. The petition also includes excerpts of the 2006 Antelope Valley AT&T telephone directory listing more than 80 entities—businesses, churches, and health care providers, a college, a high school district, and a chamber of commerce—with "Antelope Valley" in their names.

References to the "High Desert" in the proposed viticultural area name include an excerpt from the 2006 Antelope Valley AT&T telephone directory. The telephone directory lists 25 entities in the subject Antelope Valley area—businesses, health care providers, a school, a church, and a hospital—with "High Desert" in their names.

Also of relevance, Antelope Valley is described as "Medium to high desert of California and southern Nevada" in the "Sunset Western Garden Book" (Kathleen Norris Brenzel, editor, eighth edition, January 2007, Sunset Publishing Corporation, Menlo Park, California), which is discussed in more detail below.

Boundary Evidence

The Antelope Valley region is a wedge-shaped portion of the western Mojave Desert, according the petitioner. The north and west sides of the wedge border the Tehachapi Mountains; the south side of the wedge borders the San

Gabriel Mountains, the Sierra Pelona Mountains, and Portal Ridge. The east side is an open continuation of the Mojave Desert.

The boundary line for the proposed Antelope Valley of the California High Desert viticultural area defines an area in the greater Antelope Valley region. The area within the proposed viticultural area boundary line has similar climate, geology, geography, and soils. These geographical features are distinct from the geographical features in the areas outside the boundary of the proposed viticultural area.

The proposed northern portion of the boundary line is defined by a portion of the Los Angeles Aqueduct, roads, elevation lines, a trail, the southwest perimeter of the Edwards Air Force Base (AFB), and a series of stairstep section lines on the USGS map. The proposed eastern portion of the boundary line is defined by a section line. The proposed southern portion of the boundary line is defined by elevation lines and a portion of the California Aqueduct system, which runs along the foothills of the surrounding mountains. The proposed western portion of the boundary line is defined by a portion of the Los Angeles Aqueduct. No part of Edwards AFB lies within the proposed viticultural area.

Distinguishing Features

The distinguishing features of the proposed Antelope Valley of the California High Desert viticultural area include climate, geology, geography, and soils, according to the petition.

Climate

The petition states that, in most years, summers in the Antelope Valley are hot and dry, and winters are relatively cold (Soil Survey of the Antelope Valley Area, California, 1970, U.S. Department of Agriculture, Soil Conservation Service, in cooperation with the University of California Agricultural Experiment Station). Annual precipitation in the valley ranges from 4 to 9 inches, with little or no snow. The growing season is 240 to 260 days long. The table below summarizes the climate data presented in the petition for the Antelope Valley and the surrounding areas. The data are discussed in the text below.

ANNUAL PRECIPITATION, GROWING SEASON LENGTH, WINTER LOW TEMPERATURES, SUNSET CLIMATE ZONE, AND WINKLER CLIMATE REGION FOR ANTELOPE VALLEY AND THE SURROUNDING AREAS

Location	Antelope Valley	North	East	Southeast	South central	Southwest	West
	Within	Tehachapi Mountains	Victorville and Edwards AFB	San Gabriel Mountains transitioning to higher elevations	San Gabriel Mountains, lower elevations	San Gabriel Mountains, higher elevations	Sandberg
Annual precipitation (in.)	4–9	12–20	1.4–5	10–20	10–20	9–20	14–16
Growing season (days)	240–260	50–100	215–235	170–190	220–240	100–150	50–100
Sunset climate zone*	11	1A	10	7	18	2A	1A
Winkler region/ degree days**	V (4,600)	No Data	V (4,900)	No Data	No Data	No Data	III (3,370)

*See the "Sunset Western Garden Book" (Brenzel), discussed below.
**See "General Viticulture" (Winkler), discussed below.

Hot summers, cold winters, and widely varying daily temperatures characterize the climate in the Antelope Valley, according to the petition. On average, 110 days a year have high temperatures above 90 degrees F, but nights are mild. The growing season extends from mid-March to early November. Winter low temperatures range from 6 to 11 degrees F.

In the mountainous areas to the south, west, and north of the Antelope Valley, summers are cool and winters are cold, according to the petition. To the west, in addition to the mountainous region, are areas of lower elevation terrain with a longer and warmer growing season conducive to successful viticulture. Annual precipitation is 9 to 20 inches, significantly more than the 4 to 9 inches of precipitation in the valley; consequently, it increases the groundwater supply in the valley. The growing season in the mountains ranges from 50 to 240 days, as compared to the growing season in the proposed viticultural area which ranges from 240 to 260 days.

Northeast of the proposed viticultural area lies Edwards AFB, for which climate data related to agriculture or viticulture is limited, according to the petition. To the southeast, in an Antelope Valley-Mojave Desert transition zone, summers are hot; winters are mild with neither severe cold nor high humidity. The growing season of this transition zone is 170 to 190 days—shorter than that in the Antelope Valley.

There are 24 climate zones within the continental western United States, according to the "Sunset Western Garden Book" (Brenzel). Sunset climate zones are based on factors such as winter minimum temperatures, summer high temperatures, length of the growing season, humidity, and rainfall patterns. These factors are determined by latitude, elevation, ocean proximity and influence, continental air, hills and mountains, and local terrain. Climate in Sunset climate zone 1 is the harshest cold weather, and climate in Sunset climate zone 24 is the mildest.

The Antelope Valley lies in Sunset climate zone 11, "Medium to high desert of California and southern Nevada," according to the petition. Different Sunset climate zones exist in areas 11 miles or less to the north, west, and south of the Antelope Valley. The Tehachapi Mountains, to the north, and Sandberg, to the west, are in Sunset climate zone 1A, "Coldest mountains and intermountain areas throughout the contiguous states and southern British Columbia." Winter low temperatures are 0 to 11 degrees F. The growing season in climate zone 1A generally lasts from end of May to the first part of September, and summers are mild. To the south, in the higher elevations of the San Gabriel Mountains, lies Sunset climate zone 2A, "'Cold Mountain and Inter-Mountain' Areas." Winter low temperatures are 10 to 20 degrees F.

The lower-elevation areas of the San Gabriel Mountains south of the Antelope Valley lie in Sunset climate zone 18, "Above and below the thermal belts in Southern California's interior valleys." The growing season in climate zone 18 can extend from the end of March to late November. Winter low temperatures average between 7 and 22 degrees F. The lower-elevation areas of the San Gabriel Mountains are intermediate zones where the Antelope Valley transitions to the part of the San Gabriel Mountains in Sunset climate zone 2A.

Southeast of the Antelope Valley, where the San Gabriel Mountains transition to higher elevations, lies Sunset climate zone 7, "California's

Gray Pine Belt." The growing season in climate zone 7, from late April to early October, extends from 170 to 190 days. Summers are hot, and winters are mild. Winter low temperatures average between 26 to 35 degrees F.

The area to the east of the Antelope Valley, near Victorville and Edwards AFB, lies in Sunset climate zone 10, "High desert areas of Arizona and New Mexico." This zone includes the part of the Mojave Desert near the California-Nevada border. Climate zone 10's growing season, early April to November, averages 225 days. Winter low temperatures average between 22 to 25 degrees F.

The Winkler climate classification system uses heat accumulation during the growing season to define climatic regions for viticulture ("General Viticulture," by Albert J. Winkler, University of California Press, 1974, pp. 61–64). As a measurement of heat accumulation during the growing season, 1 degree day accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, the minimum temperature required for grapevine growth. Climatic region I has less than 2,500 growing degree days per year; region II, 2,501 to 3,000; region III, 3,001 to 3,500; region IV, 3,501 to 4,000; and region V, 4,001 or more.

The proposed Antelope Valley of the California High Desert viticultural area has an annual average heat accumulation of 4,600 degree days and therefore is in Winkler climate region V, according to the petition. The areas to the east, also in Winkler region V, have a greater annual heat accumulation (4,900 degree days) but a shorter growing season (215 to 235 days) compared to the proposed viticultural area. Sandberg, to the west of the Antelope Valley, is in Winkler region III. Most mountainous areas surrounding the Antelope Valley are not assigned to a Winkler climate region because they are too cold to support commercial viticulture.

Geology

Geology has influenced the topography of the Antelope Valley, the surrounding mountains, and the neighboring desert, according to the petition. The distinguishing geologic features of the proposed viticultural area are valley fill, alluvial soils, diverging fault lines, and relatively young rocks.

The topography of the Mojave Desert of California, of which the Antelope Valley is a part, varies from fault scarps and playas to surrounding hills and mountains. Valley fill is thickest in the Antelope Valley, in the westernmost part of the Mojave Desert.

The Antelope Valley region is a geologically old basin that more recent alluvium has filled. Intermittent and ephemeral streams drain into two playas within the basin: Rosamond and Rogers Dry Lakes (U.S. Department of Agriculture, Soil Conservation Service). The valley landform resulted from a depression at the intersection of diverging fault lines from branches of the Garlock and San Andreas Faults. The valley's steep vertical relief evolved from a strike slip on the San Andreas Fault or an associated, branching fault.

The relatively young age of the alluvial fill within the proposed viticultural area contrasts with the age of rocks in the surrounding areas, according to the petition. The rocks in the Antelope Valley region date primarily to the Cenozoic Era (65.5 million years ago to recent). The alluvial fill is Quaternary (2 million years ago to recent). Surrounding the Antelope Valley region, the rocks generally date to the Cretaceous Period (65 to 136 million years ago), the Jurassic Period (136 to 190 million years ago), and the Triassic Period (190 to 225 million years ago).

Plutonic rocks are predominant in the mountainous areas surrounding the proposed viticultural area boundary line. They include crystalline, granite, quartz diorite, quartz monzonite, and granodiorite. These rocks, the granite and diorite granite rocks in particular, weathered to form mainly consolidated and unconsolidated, mostly nonmarine alluvium on the valley floor. However, Oso Canyon, at the western tip of the valley, is a sedimentary bed dating to the Miocene epoch (about 23 to 5 million years ago).

Geography

The terrain of the proposed Antelope Valley of the California High Desert viticultural area is characterized by significant uniformity and continuity, according to the petition. Slopes are level or nearly level on the valley floor, but range to gently sloping to moderately sloping on rises at the upper elevations of the terraces and alluvial fans. And, although the proposed viticultural area is approximately 52 miles wide, elevation varies only 838 feet, as shown on the USGS maps. The elevation of the surrounding mountains varies from that of the valley by approximately 450 to 4,900 feet, as shown on the USGS maps and the table below.

ELEVATION OF LOCATIONS IN THE ANTELOPE VALLEY AND SURROUNDING AREAS

Location	Area	Distance from proposed viticultural area (miles)	Direction from proposed viticultural area	Elevation (feet)
Antelope Valley	Greater Antelope Valley region	0	Within	2,300–3,100
Double Mountain	Tehachapi Mountains	10.5	North	7,981
Soledad Mountain	Rosamond Hills	2	North	4,500
Silver Peak	Shadow Mountains	16	East	4,043
Burnt Peak	Liebre Mountains	6	South	5,888
Mount McDill	Sierra Pelona Range	6.25	South	5,187
Pine Peak	Liebre Mountains	2.25	West	3,555

Soils

The proposed Antelope Valley of the California High Desert viticultural area lies on the western rim of an old alluvial basin with interior drainage by intermittent and ephemeral streams (U.S. Department of Agriculture, Soil Conservation Service). The proposed boundary line closely follows the highest elevations of the alluvial fans and terraces of the basin.

The soils in the Antelope Valley formed in alluvium weathered from granite and other rocks in the surrounding mountains, according to the petition. The soils are: very deep loamy fine sand to loam and silty clay; well drained and well aerated in the root zone; and mineral rich with low to moderate fertility. The available water capacity ranges from 5 to 12 inches.

The predominant soils in the proposed viticultural area are the Hesperia-Rosamond-Cajon, Adelanto,

Arizo, and Hanford-Ramona-Greenfield associations. These soils formed in alluvium derived from granitic rock on alluvial fans and terraces. Generally, they vary in drainage, slope, elevation, and natural vegetation.

The Hesperia-Rosamond-Cajon association consists of moderately well drained to excessively drained soils on 0 to 15 percent slopes. Elevations range from 2,400 to 2,900 feet. Natural vegetation includes annual grasses, forbs [wild flowers], Joshua tree, Mormon tea, rabbit brush, and large sagebrush.

The Adelanto association consists of well drained soils on 0 to 5 percent slopes. Elevations range from 2,450 to 2,800 feet. Natural vegetation consists of annual grasses and forbs and in some areas desert stipa, sagebrush, creosote bush, Joshua tree, and juniper.

The Arizo association consists of excessively well drained soils on 0 to 5 percent slopes. Elevations range from 2,950 to 3,100 feet. Natural vegetation includes annual grasses, forbs, creosote bush, Mormon tea, and rabbit brush.

The Hanford-Ramona-Greenfield association consists of well drained soils on 0 to 30 percent slopes. Elevations range from 2,600 to 3,900 feet. Natural vegetation includes annual grasses and forbs and, in scattered areas, juniper.

Unlike the soils in the Antelope Valley, the soils on the surrounding uplands are generally shallow, excessively well drained, coarse sandy loam, and available water capacity is 1.5 to 7 inches. Included with the soils in the Antelope Valley are saline soils in small, scattered areas within the proposed viticultural area. Outside the proposed viticultural area, near Rosamond and Rogers Lakes, saline soils appear as larger areas. TTB notes that saline soils are not suitable for agriculture, including viticulture.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 108 regarding the proposed Antelope Valley of the California High Desert viticultural area in the **Federal Register** (75 FR 53877) on September 2, 2010. In that notice, TTB invited comments from all interested persons by November 1, 2010. TTB solicited comments on the sufficiency and accuracy of the name, boundary, climate, soils, and other required information submitted in support of the petition. TTB expressed particular interest in receiving comments regarding whether there would be a conflict between the term "Antelope Valley of the California High Desert" and any currently used brand names.

In response to that notice, TTB received 16 comments, 15 of which expressed support for establishing the proposed viticultural area. Most of the comments expressed the belief that Antelope Valley of the California High Desert is a unique grape-growing area, and several comments specifically noted that the proposed viticultural area's climate, geology, geography, and soils are distinctive as compared to the neighboring areas. Other comments generally agreed with the petition's description of the area's distinguishing features.

One comment opposed the establishment of the proposed viticultural area, contending that the area is not locally or nationally recognized for its grape-growing and wine production, and that the petition lacks ample historical or current evidence to support the proposed boundaries. In a subsequent comment responding to the opposing commenter, the petitioners highlighted the portions of the petition and its exhibits that provided the historical and current evidence of the area's name recognition and its proposed boundaries. The petitioners' evidence included the city library's local history webpage, various maps of the area, the Geographical Names Information System of the U.S. Geological Survey, and detailed descriptions of the differences in the geology, soils, climate, elevation, and rainfall on each side of the proposed boundary line. This evidence was not refuted by the opposing commenter.

TTB also notes that the opposing comment relied upon some assertions not relevant to TTB's determination regarding the establishment of a viticultural area, such as statements about whether it is apparent that one is entering or leaving a viticultural area when traveling through the region.

TTB Finding

After careful review of the petition and the comments received, TTB finds that the evidence submitted supports the establishment of the proposed viticultural area. Accordingly, under the authority of the Federal Alcohol Administration Act and part 4 of TTB's regulations, TTB establishes the "Antelope Valley of the California High Desert" viticultural area in Los Angeles and Kern Counties, California, effective 30 days from the publication date of this document.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this notice. In this final rule, TTB altered some of the language in the written boundary description provided in the petition and published as part of Notice No. 108. TTB made these alterations in the written boundary description language for clarity and to conform the written boundary description to the boundary of the proposed viticultural area as marked on the USGS maps submitted with the petition.

Maps

The maps for determining the boundary of the viticultural area are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area, its name, "Antelope Valley of the California High Desert," is recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the new regulation clarifies this point.

Once this final rule becomes effective, wine bottlers using "Antelope Valley of the California High Desert" in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use "Antelope Valley of the California High Desert" as an appellation of origin.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term of viticultural significance appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a previously approved label uses the name "Antelope Valley of the California High Desert" for a wine that does not meet the 85 percent standard, the previously approved label will be subject to revocation upon the effective date of the approval of the

Antelope Valley of the California High Desert viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name or other viticulturally significant term that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Elisabeth C. Kann of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.219 to read as follows:

§ 9.219 Antelope Valley of the California High Desert.

(a) *Name.* The name of the viticultural area described in this section is "Antelope Valley of the California High Desert". For purposes of part 4 of this chapter, "Antelope Valley of the California High Desert" is a term of viticultural significance.

(b) *Approved maps.* The 20 United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Antelope Valley of the California High Desert viticultural area are titled:

(1) Rosamond Quadrangle, California, 1973;

(2) Rosamond Lake Quadrangle, California, 1973;

(3) Redman Quadrangle, California, 1992;

(4) Rogers Lake South Quadrangle, California, 1992;

(5) Alpine Butte Quadrangle, California-Los Angeles Co., 1992;

(6) Hi Vista Quadrangle, California-Los Angeles Co., 1957, revised 1992;

(7) Lovejoy Buttes Quadrangle, California-Los Angeles Co., 1957, revised 1992;

(8) El Mirage Quadrangle, California, 1956, revised 1992;

(9) Littlerock Quadrangle, California-Los Angeles Co., 1957, revised 1992;

(10) Palmdale Quadrangle, California-Los Angeles Co., 1958, photorevised 1974;

(11) Ritter Ridge Quadrangle, California-Los Angeles Co., 1958, photorevised 1974;

(12) Lancaster West Quadrangle, California-Los Angeles Co., 1958, photorevised 1974;

(13) Del Sur Quadrangle, California-Los Angeles Co., 1995;

(14) Lake Hughes Quadrangle, California-Los Angeles Co., 1995;

(15) Fairmont Butte Quadrangle, California, 1995;

(16) Neenach School Quadrangle, California, 1995;

(17) Tylerhorse Canyon Quadrangle, California-Kern Co., 1995;

(18) Willow Springs Quadrangle, California-Kern Co., 1965, photorevised 1974;

(19) Little Buttes Quadrangle, California, 1965, photorevised 1974; and

(20) Soledad Mtn. Quadrangle, California-Kern Co., 1973.

(c) *Boundary.* The Antelope Valley of the California High Desert viticultural area is located in Los Angeles and Kern Counties, California. The boundary of the Antelope Valley of the California High Desert viticultural area is as described below:

(1) The beginning point is on the Rosamond map at the intersection of the Kern and Los Angeles Counties boundary line and the Edwards Air Force Base (AFB), boundary line, T8N, R12W. From the beginning point, proceed south along the Edwards AFB boundary line to West Avenue E, where the Edwards AFB boundary line turns east, section 22, T8N/R12W; then

(2) Proceed generally east along the Edwards AFB boundary line, crossing over the Rosamond Lake and Redman maps, onto the Rogers Lake South map to the point where the Edwards AFB boundary line crosses the 2,500-foot elevation line along the northern boundary of section 30, T8N/R9W; then

(3) Proceed generally south along the meandering 2,500-foot elevation line, crossing over the Redman and Alpine Butte maps, onto the Hi Vista map to the elevation line's intersection with Avenue J, section 17, T7N/R9W; then

(4) Proceed straight east approximately 0.2 mile along Avenue J to the northeast corner of section 20, T7N/R9W, (intersection of Avenue J and 160th Street East); then

(5) Proceed straight south along the eastern boundary lines of sections 20 and 29, T7N/R9W, to the northwestern corner of section 33, T7N, R9W; then

(6) Proceed in a clockwise direction along the northern and eastern boundary lines of section 33, T7N/R9W, to the northwestern corner of section 3, T6N/R9W (intersection of Avenue M and 170th Street East); then

(7) Proceed in a clockwise direction along the northern and eastern boundary lines of section 3, T6N/R9W, to the northwestern corner of section 11, T6N/R9W; then

(8) Proceed in a clockwise direction along the northern and eastern boundary lines of section 11, T6N/R9W, crossing onto the Lovejoy Buttes map, to the northwestern corner of section 13, T6N/R9W; then

(9) Proceed in a clockwise direction along the northern and eastern boundary lines of section 13 and then the eastern boundary line of section 24, T6N/R9W, to the northwestern corner of section 30, T6N/R8W (intersection of Avenue Q and 200th Street East); then

(10) Proceed in a clockwise direction along the northern and eastern boundary lines of section 30, T6N/R8W, to the northwestern corner of section 32, T6N/R8W; then

(11) Proceed east along the northern boundary of section 32 T6N/R8W, crossing onto the El Mirage map, and continue along the northern boundary of section 33, T6N/R8W, to elevation point 2916 (along Avenue R); then

(12) Proceed due south in a straight line to the point where the 3,100-foot elevation line crosses the eastern boundary line of section 8, T5N/R8W; then

(13) Proceed generally west-southwest along the meandering 3,100-foot elevation line, crossing over the Lovejoy Buttes map, onto the Littlerock map and continue to the elevation line's intersection with the California Aqueduct, approximately 0.2 mile south of Pearlblossom Highway, section 22, T5N/R10W; then

(14) Proceed generally north and then northwest along the California Aqueduct, crossing over the Palmdale, Ritter Ridge, Lancaster West, Del Sur, Lake Hughes, and Fairmont Butte maps,

onto the Neenach School map to the California Aqueduct's intersection with the Pacific Crest National Scenic Trail (adjacent to the Los Angeles Aqueduct) in section 16, T8N/R16W; then

(15) Proceed north and then generally east and north along the Pacific Crest National Scenic Trail, crossing over the Fairmont Butte map, and continue onto the Tylerhorse Canyon map to the point where the Trail and the adjacent Los Angeles Aqueduct separate near elevation point 3120 and West Antelope Station in section 3, T9N/R15W; then

(16) Proceed generally northeast along the Los Angeles Aqueduct crossing onto the Willow Springs map, to the Aqueduct's intersection with Tehachapi Willow Springs Road, section 7, T10N/R13W; then

(17) Proceed generally south on Tehachapi Willow Springs Road, crossing onto the Little Buttes map, to the road's intersection with the 2,500-foot elevation line along the western boundary of section 17, T9N/R13W; then

(18) Proceed generally east along the meandering 2,500-foot elevation line, crossing over the Willow Springs map and continuing onto the Soledad Mtn. map, where that elevation line crosses over and back three times from the Rosamond map, to the elevation line's intersection with the Edwards AFB boundary line, section 10, T9N/R12W; and then

(19) Proceed straight south along the Edwards AFB boundary line, crossing over to the Rosamond map, and return to the beginning point.

Signed: January 5, 2011.

John J. Manfreda,

Administrator.

Approved: January 5, 2011.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2011–12823 Filed 5–23–11; 8:45 am]

BILLING CODE XXXX–XX–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SATS No. AL–076–FOR; Docket ID: OSM–2010–0020]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama revised its regulations regarding their license fees, annual license updates, and blaster certification fees. Alabama revised its program to improve operational efficiency.

DATES: *Effective Date:* May 24, 2011.

FOR FURTHER INFORMATION CONTACT: Sherry Wilson, Director, Birmingham Field Office. Telephone: (205) 290–7282. E-mail: *swilson@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alabama program effective May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Alabama program in the May 20, 1982, **Federal Register** (47 FR 22057). You can also find later actions concerning the Alabama program and program amendments at 30 CFR 901.10, 901.15, and 901.16.

II. Submission of the Amendment

By letter dated October 28, 2010 (Administrative Record No. AL–0662), Alabama sent us amendments to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Alabama's revised mining regulations are found at Alabama Rule 880–X–6A–.07 License Fees; Alabama Rule 880–X–6A–.08 Annual License Updates; and Alabama Rule 880–X–12A–.09 Fees.

We announced receipt of Alabama's proposed amendment in the February 22, 2011, **Federal Register** (76 FR 9700). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on March 24, 2011. We did not receive any public comments.

III. OSM's Findings

We are approving the amendment as described below. The following are the findings we made concerning the amendments under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. The full text of Alabama's program amendment is available for you to read at *http://www.regulations.gov*.

A. Alabama Rule 880–X–6A–.07 License Fees

Alabama increased its license fee to $2,500.00 and deleted language regarding pre-existing license fees. There is no Federal counterpart to this section and we find the modifications are not inconsistent with the requirements of SMCRA or the Federal regulations. Therefore, we are approving it.

B. Alabama Rule 880–X–6A–.08 Annual License Updates

Alabama revised this section by modifying the date of annual license updates. Alabama deleted the word "renewal" and replaced it with "license update" or "update." Alabama increased its license update fees to $500.00. Alabama added new language detailing the penalty process for not submitting an annual license update form and applicable fees. There is no Federal counterpart to this section and we find that the modifications are not inconsistent with the requirements of SMCRA or the Federal regulations. Therefore, we are approving it.

C. Alabama Rule 880–X–12A–.09 Fees

Alabama added a new section establishing a blaster certification fee of $100.00; a blaster certification renewal fee of $50.00; and a reciprocity fee of $50.00. There is no Federal counterpart to this section and we find the addition of this new section is not inconsistent with the requirements of SMCRA or the Federal regulations. Therefore, we are approving it.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on Alabama's revised program amendments, but did not receive any.

Federal Agency Comments

On November 26, 2010, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alabama program (Administrative Record No. AL–0662.01). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Alabama proposed to make in this amendment pertained to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on November 26, 2010, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. AL–0662.01). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On November 26, 2010, we requested comments on the Alabama amendment (Administrative Record No. AL–0662.01), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Alabama sent us on October 28, 2010. To implement this decision, we are amending the Federal regulations at 30 CFR Part 901, which codify decisions concerning the Alabama program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10) decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that 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. This determination is based on the fact that the Alabama program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Alabama program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied

upon the data and assumptions for the Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon Federal regulations for which an analysis was prepared and a determination made that the Federal regulations were not considered major.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 25, 2011.

Ervin J. Barchenger,

Regional Director, Mid-Continent Region.

For the reasons set out in the preamble, 30 CFR part 901 is amended as set forth below:

PART 901—ALABAMA

■ 1. The authority citation for Part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 901.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* * *	* *
October 28, 2010	May 24, 2011	Sections 880–X–6A–.07, 880–X–6A–.08, and 880–X–12A–.09.

[FR Doc. 2011–12747 Filed 5–23–11; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–030–FOR; Docket ID No. OSM–2009–0007]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Montana regulatory program (the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). Montana proposed revisions to and additions of statutes about bond release responsibility periods for water management facilities and other support facilities comprising less than 10 percent of the total bond release area. Montana revised its program to clarify ambiguities and improve operational efficiency.

DATES: *Effective Date:* May 24, 2011.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Casper Field Office Director, Telephone: (307) 261–6550, Internet address: *jfleischman@OSMRE.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Submission of the Proposed Amendment

By letter dated May 12, 2009, Montana sent us an amendment to its program (Administrative Record No. MT–27–01, Regulations.gov Document ID No. OSM–2009–0007–0002) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment to include changes made at its own initiative.

We announced receipt of the proposed amendment in the August 12, 2009, **Federal Register** (74 FR 40537). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. MT–27–05; Regulations.gov Document ID No. OSM–2009–0007–0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on September 11, 2009. We received one public comment and one Federal agency comment. During our review of Montana's original submittal and the comments received, we identified concerns with the amendment proposal. We conveyed our

concerns to Montana by letter dated March 19, 2010 (Administrative Record No. MT–27–08; Regulations.gov Document ID No. OSM–2009–0007–0006). In response to our concerns, Montana revised its proposed language at MCA 82–4–235(3)(a) by letter dated April 12, 2010 (Administrative Record No. MT–27–09; Regulations.gov Document ID No. OSM–2009–0007–0007). We then reopened the public comment period on the amendment's adequacy (75 FR 43476; Regulations.gov Document ID No. OSM–2009–0007–0008). We did not receive any comments on the revised amendment proposal.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Minor Revisions to Montana's Statutes

Montana proposed minor wording, editorial, and recodification changes to the following previously-approved statutes: 82–4–235(2); 82–4–235(3) recodififed as 82–4–235(4)(a) and 82–4–235(4)(b). These minor revisions were necessary to implement the changes made at 82–4–235(3)(a) and (b) discussed below.

These minor, editorial, and recodification changes, which are necessary to implement the changes to MCA 82–4–235(3)(a) and (b) approved below, do not impact the effectiveness of the current statute. We find that they are no less stringent than SMCRA and therefore we approve them.

B. Revisions to Montana's Statute With No Federal Counterpart (82–4–235(3)(a) and (b))

Montana proposed to revise its regulations for bond release procedures to allow areas that were utilized for water management and other support facilities to be exempt from the ten-year revegetation responsibility period. Water management and other support facilities in the proposal include sedimentation ponds, diversions, other water management structures, soil stockpiles, and access roads. The exemption cannot comprise more than ten percent of a bond release area. The exempted areas will still be subject to all other applicable reclamation and revegetation requirements under Montana's regulatory program.

Section 515(b)(20) of SMCRA provides that the revegetation responsibility period shall commence "after the last year of augmented seeding, fertilizing, irrigation, or other work" needed to assure revegetation success. In the absence of any indication of Congressional intent in the legislative history, OSM interprets this requirement as applying to the increment or permit area as a whole, not individually to those lands within the permit area upon which revegetation is delayed solely because of their use in support of the reclamation effort on the replanted area. As implied in the preamble discussion of 30 CFR 816.46(b)(5), which prohibits the removal of ponds or other siltation structures until 2 years after the last augmented seeding, planting of the sites from which such structures are removed need not be considered an augmented seeding necessitating an extended or separate responsibility period (48 FR 44038–44039; September 26,1983). Indeed, given the Federal regulation that prohibits removal of sediment ponds until two years after the last augmented seeding, restarting the ten year responsibility period when a sediment pond is removed would result in the responsibility period being a minimum of twelve years in all cases. This is clearly not consistent with the ten year minimum period mandated by SMCRA at section 515(b)(20)(A). Montana's counterpart Administrative Rule prohibiting sedimentation ponds and other water treatment facilities from being removed sooner than 2 years after the last augmented seeding of reclaimed land within the drainage basin can be found at MAR 26.4.639(22)(a)(i).

The purpose of the revegetation responsibility period is to ensure that the mined area has been reclaimed to a condition capable of supporting the desired permanent vegetation. Achievement of this purpose will not be adversely affected by this interpretation of section 515(b)(20) of SMCRA because (1) the lands involved are small in size and widely dispersed, and (2) the delay in establishing revegetation on these sites is due not to reclamation deficiencies or the facilitation of mining, but rather to the regulatory requirement that ponds and diversions be retained and maintained to control runoff from the planted area until vegetation is sufficiently established to render such structures unnecessary for the protection of water quality.

In addition, the affected areas are not likely to be larger than those which could be reseeded (without restarting the responsibility period) in the course of performing normal husbandry practices, as that term is defined in 30 CFR 816.116(c)(4) and explained in the preamble to that rule (53 FR 34636, 34641; September 7, 1988; 52 FR 28012, 28016; July 27, 1987). Areas this small would have a negligible impact on any evaluation of the permit area as a whole. Most importantly, this interpretation is unlikely to adversely affect the regulatory authority's ability to make a statistically valid determination as to whether a diverse, effective, and permanent vegetative cover has been successfully established in accordance with the appropriate revegetation success standards.

From a practical standpoint, it is usually difficult to identify precisely where such areas are located in the field once vegetation is established in accordance with the approved reclamation plan. The above discussion of the rules in 30 CFR part 816, which applies to surface mining activities, also pertains to similarly or identically constructed section 30 CFR part 817, which applies to underground mining activities.

For the reasons outlined above, OSM adopted a policy to allow the approval of State program amendment provisions specifying that areas reclaimed following the removal of siltation structures, associated diversions, and access roads are not subject to a revegetation responsibility period and bond liability period separate from that of the permit area or increment thereof served by such facilities (58 FR 48333; September 15, 1993). OSM has since taken a consistent position in approving amendments of this sort. Such amendments to the Colorado (61 FR 26792; May 29, 1996), Illinois (62 FR 54765; October 22, 1997), Kentucky (63 FR 41423; August 4, 1998), and Ohio (63 FR 51829; September 29, 1998) State programs have already been approved. OSM's policy clearly distinguishes which types of areas may be excluded from the revegetation responsibility period. Montana proposed to allow sedimentation ponds, diversions, other water management structures, soil stockpiles, and access roads to be exempted from the revegetation responsibility period.

Water management structures including sedimentation ponds and diversions form the basis for OSM's policy to allow State program amendments such as what Montana proposed. These are the areas which are required to be retained for two years after surrounding areas have been reclaimed. These relatively small areas are retained in support of reclamation. This retention is not due to any deficiency in reclamation or in support of mining activities.

Access roads would be maintained in order to provide access to sediment ponds and other water treatment

facilities. Access roads are generally smaller and less traveled than haul roads or primary roads and are therefore less likely to encompass a significant portion of the permit area or cause significant environmental harm. Additionally, access roads are not used to haul coal or spoil, so they are not retained to facilitate mining.

Soil stockpiles would be depleted because soil would already be spread over at least 90% of the bond release area before the revegetation responsibility period begins. Small soil stockpiles would be temporarily retained in order to reclaim water treatment facilities and associated access road areas. Therefore, they would be temporarily retained in support of reclamation and not due to any deficiency in reclamation or in support of mining activities. Soil stockpile areas must be reclaimed and revegetated in order to meet all bond release requirements other than the ten-year responsibility period.

The effect of this provision will be to start the responsibility "clock" for an entire bond release area when reclamation work has been completed on at least ninety percent of the land. Successfully reclaimed areas that had been utilized for water treatment facilities and associated soil stockpile and access road areas will not need to be delineated and held out of the bond release when surrounding areas have completed the responsibility timeframe. The entire bond release area will be sampled for vegetation adequacy and inspected for compliance with bond release requirements.

This amendment helps facilitate timely bond release for areas disturbed by the removal of overburden and coal that are properly backfilled, reclaimed, and meet revegetation success standards for the ten year responsibility period. Bond release for the majority of the reclaimed area will not be held up by reclamation of the small areas associated with support facilities. All areas will be sampled and assessed for reclamation success. Small parcels of more recently reclaimed land within the bond release area must demonstrate stability and reclamation success as if vegetation has had ten years to establish. If reclamation success cannot be demonstrated, bond release cannot be approved.

As discussed above, OSM has an established policy permitting regulatory authorities to promulgate amendments providing for bond releases to be conducted as Montana proposed. The amendment is consistent with SMCRA section 515(b)(20) and we approve it.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the original amendment proposal (74 FR 40537; Regulations.gov Document ID No. OSM–2009–0007–0001). We received one public comment. The commenter did not believe that the proposed amendment complied with SMCRA.

Montana's original submittal was proposing to exempt more types of areas than permissible under OSM's interpretation of SCMRA 515(b)(20). We sent a concern letter to Montana identifying problematic language ("but are not limited to," "segments of haul roads, and electrical substations"). Montana responded by deleting this language from the amendment proposal.

OSM's interpretation of SMCRA 515(b)(20) pertaining to this type of State program amendment was established in 1993. Since then OSM has taken a consistent stance on such State program amendments, provided that they meet the standards put forth in 58 FR 48333, as discussed above. The intent of SMCRA's revegetation responsibility period is to ensure the establishment of a diverse, effective, and permanent vegetative cover on reclaimed mine lands. All revegetation and stability standards must be met on all lands before being released from bond. The intent of SMCRA is met while allowing the regulatory authority to process bond releases on logical units of land in a timely manner. OSM believes that the revised amendment is not inconsistent with SMCRA.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Montana program (Administrative Record ID No. MT–27–03; Regulations.gov Document ID No. OSM–2009–0007–0003).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (Administrative Record ID No. MT–27–03; Regulations.gov Document ID No. OSM–2009–0007–0004). EPA responded on July 9, 2009, stating its agreement that granting some relaxation from the 10-year responsibility period for the last types of disturbances to be reclaimed may be warranted (Administrative Record ID No. MT–27–04; Regulations.gov Document ID No. OSM–2009–0007–0005.1). We agree that a small percentage of land containing structures which by necessity must be reclaimed last need not restart the reclamation responsibility period, and are approving this amendment.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. Although this amendment does not pertain to historic preservation, we requested SHPO comments on Montana's amendment by letter dated on June 9, 2009 (Administrative Record ID No. MT–27–03; Regulations.gov Document ID No. OSM–2009–0007–0004). We did not receive a response to our request.

V. OSM's Decision

Based on the above findings, we approve Montana's May 12, 2009, as revised on April 12, 2010, amendment.

To implement this decision, we are amending the Federal regulations at 30 CFR part 926, which codify decisions concerning the Montana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Montana program, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives, and other materials. We will require Montana to enforce only approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is

based on the analysis performed for the Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that 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. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 CFR U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 16, 2011.

Allen D. Klein,

Regional Director, Western Region.

For the reasons set out in the preamble, 30 CFR part 926 is amended as set forth below:

PART 926—MONTANA

■ 1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 926.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	* *
May 12, 2009	May 24, 2011	MCA 82–4–235(2), –235(3)(a), –235(3)(b), –235(4)(a), and –235(4)(b).

[FR Doc. 2011–12746 Filed 5–23–11; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0378]

Drawbridge Operation Regulation; New Jersey Intracoastal Waterway (NJICW), Inside Thorofare, Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the US40–322 (Albany Avenue) Bridge, at NJICW mile 70.0, across Inside Thorofare in Atlantic City, NJ. The deviation restricts the operation of the draw span in order to facilitate the free movement of vehicles over the bridge during the Dave Matthews Band three-day series of concerts and fireworks display.

DATES: This deviation is effective from 7 a.m. on June 24, 2011 until 2 a.m. on June 27, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0378 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0378 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION: The New Jersey Department of Transportation owns and operates this bascule drawbridge and has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.733(f) to facilitate the free movement of 70,000 fans and vehicles during the three-day concert and fireworks display.

The US40–322 (Albany Avenue) Bridge, at NJICW mile 70.0 across Inside Thorofare in Atlantic City, NJ has a vertical clearance in the closed position to vessels of 10 feet above mean high water.

Under normal operating conditions the draw would open on signal, except that:

(1)Year-round, from 11 p.m. to 7 a.m. and from November 1 through March 31 from 3 p.m. to 11 p.m. the draw need only open if at least four hours notice is given; and

(2)From June 1 through September 30:

(i) from 9 a.m. to 4 p.m. and from 6 p.m. to 9 p.m., the draw need only open on the hour and half hour; and (ii) from 4 p.m. to 6 p.m., the draw need not open.

Under this temporary deviation, beginning at 8 a.m. on Friday June 24, 2011 and ending at 2 a.m. on Monday June 27, 2011, the Albany Avenue Bridge will open according to the following schedule: The drawbridge will only open on signal at 8 a.m., 10 a.m., 12 noon, 2 p.m., 4 p.m., 6 p.m., 8 p.m., and the bridge will open between 2 a.m. and 7 a.m. with four hours advance notice provided. The drawbridge will not open on signal, except as provided in this paragraph.

The drawbridge will be able to open in the event of an emergency. Vessels that can pass under the bridge without a bridge opening may do so at all times. Vessels with heights greater than 10 feet could use an alternate route. One alternate route is by way of the Atlantic Ocean.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: May 12, 2011.

Waverly W. Gregory, Jr.,

Bridge Program Manager, By direction of the Commander, Fifth Coast Guard District.

[FR Doc. 2011–12674 Filed 5–23–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0062]

RIN 1625–AA00

Safety Zone; Fleet Week Maritime Festival, Pier 66, Elliott Bay, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone extending 100 yards from Pier 66, Elliott Bay, WA to ensure adequate safety during the annual parade of ships and aerial demonstration for Fleet Week. This safety zone is necessary to promote safety on navigable waters and will do so by enforcing vessel movement restrictions in the immediate vicinity of Pier 66, Elliott Bay, WA, immediately prior to, during and immediately following this annual event. Entry into, transit through, mooring, or anchoring within these zones is prohibited unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

DATES: This rule is effective June 23, 2011. This rule is enforced annually during the parade of ships which typically occurs on a Wednesday during the last week of July or the first week in August from 8 a.m. until 8 p.m; however, it will only be enforced thirty minutes prior to, during, and thirty minutes after the annual parade of ships and aerial demonstration.

ADDRESSES: Comments and material received from the public, as well as

documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0062 and are available online by going to *http://www.regulations.gov*, inserting USCG USCG–2010–0062 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LTJG Ian S. Hanna, Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6045, e-mail *SectorPugetSoundWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 25, 2010 we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; Fleet Week Maritime Festival, Pier 66, Elliott Bay, Seattle, WA" in the **Federal Register** (75 FR 037). We received 72 comments on the proposed rule. We made changes based on those comments, and on November 24, 2010 we published a supplemental notice of proposed rulemaking (SNPRM) with the same title in the **Federal Register** (75 FR 226). We received 110 comments on the SNPRM. Seven comments requested a public meeting. We did not hold a public meeting on this rule.

Basis and Purpose

The U.S. Coast Guard is establishing a permanent safety zone extending 100 yards from Pier 66, Elliott Bay, WA to restrict the movement of vessels, thirty minutes prior to, during, and thirty minutes following the annual parade of ships and aerial demonstration, thereby ensuring participant and spectator safety.

Background

The Fleet Week Parade of Ships has historically resulted in vessel congestion near Pier 66, Elliott Bay, WA which adversely compromises participant and spectator safety. This safety zone is necessary to direct the movement of vessels in the vicinity of Pier 66 establishing unobstructed traffic lanes for response craft in the event of an emergency and ensuring participant, spectator and maritime safety. The Captain of the Port, Puget Sound may be assisted by other Federal and local agencies in the enforcement of this safety zone.

Discussion of Comments and Changes

The regulatory text of this Final Rule is the same as the regulatory text of the Supplemental Notice of Proposed Rulemaking; no changes have been made to this regulation since the SNPRM. Twenty-four comments received were outside of the scope of this rulemaking.

Seven requests for a public meeting were received. The Coast Guard does not plan to hold a public meeting. Public comment on proposed rules is an essential component of the notice-and-comment rulemaking process established by the Administrative Procedures Act (APA). An opportunity for oral presentations at public meetings may be offered but is not required. The Coast Guard has determined the two comment periods for this rule combined with numerous means available for public comment has provided adequate and sufficient time for the public to express their concerns without necessitating a public meeting. The original NPRM received over 70 comments, which were received, considered and resulted in changes to the regulation as reflected in the SNPRM. The SNPRM further allowed for public comment on this rule and received 110 comments.

Ten comments articulated reasons to hold a public meeting. The purpose of a public meeting is to provide the public the opportunity to provide comment on complex and technical issues that are difficult to articulate in written public comment. Public meetings do not include an argumentative dialogue on proposed regulations. Many of the reasons submitted ask for this kind of dialogue that the government is not allowed to engage in at a public meeting. All the comments received have been direct and easily understood. Therefore there would be no added benefit in holding a public meeting.

One comment stated that the Coast Guard could not have chosen a worse time for public comment as it occurred during a time of major U.S. holidays. The Coast Guard received 110 comments on this SNPRM and 72 comments on the NPRM for this rule. The Coast Guard has determined that these methods of comment have properly provided ample opportunity and sufficient time for the public to comment on this regulation. Operational demands and rulemaking procedures dictated the timeline of publication of this rulemaking. The abundance of comments indicates the target audience has been notified and given the opportunity to comment.

Six comments stated opposition to this regulation. The Coast Guard appreciates the reasons behind the opposition of this rule. However, this regulation is necessary to uphold agency responsibilities of promoting safety of life on navigable waters.

Ten comments stated that this regulation infringes on First Amendment rights to free speech. This regulation establishes a safety zone to promote safety of life on navigable waters. The Coast Guard is authorized to create safety zones in accordance with 33 CFR 165.20 for safety purposes. The Captain of the Port has identified a potential navigation safety problem between spectator craft and participants of the Fleet Week Parade of Ships, and this zone is designed to address that safety problem. The minimal size of this safety zone will enable displays of free speech in visibly accessible areas to take place immediately north and south of the zone along the pier. Typically spectators gather at the parade viewing area at piers 66 and 63 well before the parade. In years past, any on water protest activities have had the full attention of the spectators prior to the parade. The Coast Guard believes that this proposed safety zone is small enough in size and short enough in duration that it will not hinder or impact demonstrations of free speech. Protest, spectator, and other vessels may congregate in the vicinity of Pier 66 while spectators are assembling and dispersing from this event and this safety zone is not enforced. Furthermore, an alternate protest area is available outside of this safety zone in places which are visually and audibly accessible to spectators during the parade and aerial demonstration while this safety zone is being enforced. This includes the area directly to the south of the safety zone in front of the public Pier 63 where many of the event spectators are gathered. Pictures posted to the docket clearly show protesters in this area which is visible not only to the people gathered at Pier 63 but also clearly visible from the review stand at Pier 66.

Eleven comments stated the effect of this regulation is to deny the public the opportunity to provide a visual protest to the Navy war ships at SeaFair, in the place and during the time that the protest is most visible. The Coast Guard believes that this safety zone is small enough in size and short in duration that it will not hinder protest activities. Small boats may congregate in the vicinity of Pier 66 while spectators are

assembling and dispersing from the parade of ships while this safety zone is not enforced. During this time much of the audience is already gathered. Alternative channels for expression during the parade include the area immediately north and south of this zone where protestors will remain visible and audible to other spectators watching from Pier 66. Additionally, any place on the pier is open to protest activities.

Eight comments stated that safety is not an issue during the parade, and state that they believe the zone is a no protest zone. The Captain of the Port, Puget Sound has a legitimate safety concern with the converging of large vessels participating in the Parade of Ships and smaller vessels that gather for the event. The vessels in the parade of ships that approach Pier 66 during the parade create large wakes and some even shoot water from fire monitors, both of which pose a significant threat to any small vessels that may be gathered in front of Pier 66. Additionally, the aerial demonstration following the parade requires a clear area for the safety of the demonstrators and the small vessels gathered for the parade. Also, were an accident to occur during the parade, emergency response craft would need to transit quickly into the area. Small vessels gathered in front of Pier 66 pose a threat to event participants and themselves if they gather in certain spots. This zone is meant to delineate to all parties involved where the danger area is during the parade event and keep people clear of it.

Seven comments, including three photographs, state that there has not been any vessel congestion near Pier 66 during this event. Vessel congestion does not necessarily mean that many vessels are gathered. When one or more small spectator vessels are gathered in front of Pier 66 and significantly larger parade participant vessels approach close to the pier, the area would become congested and unsafe. This is because the larger vessels have limited maneuverability when they are near the pier, and the smaller vessels may be too underpowered to maneuver quickly to be able to get themselves out of harm's way. Also historically, more vessels have gathered for the parade than did in 2010 and it is reasonable to plan for the gathering of more vessels.

Five comments stated the revisions to the enforcement times are ambiguous. The effective period for this rule is larger than the enforcement period to allow for slight yearly fluctuations in scheduling for this annual event while enabling opportunity for public comment, providing ample public notice, and codifying this regulation. Yearly announcements indicating the exact date and time of the Parade of Ships will be published in the Local Notice to Mariners. One comment requested clarification on what "thirty minutes prior to the beginning, during and thirty minutes following the conclusion of the parade of ships" means. This regulation will be enforced beginning thirty minutes before ships arrive at Pier 66 for the review portion of the parade, during the review, and, if needed, thirty minutes following the completion of the parade of ships review, which may include an aerial demonstration. For the purposes of this regulation, the beginning of the Parade of Ships is identified by the first participant vessel approaching Pier 66.

Nine comments stated an increase in size of 40% from the safety zone described in the NPRM. The safety zone described as extending 100 yards from Pier 66, is the same as in the NPRM. Any slight increase in size is due to increased accuracy in GPS coordinates to assist in technical plotting of this data. The practical application of the physical description of this zone is not affected by these changes since the description has remained unchanged.

Two comments stated the Coast Guard usually enforces a "no-protest zone" to keep demonstrators approximately 450 yards from Pier 66. The Coast Guard would like to clarify any confusion regarding this regulation and previous years' regulations by emphasizing that the safety zone in this regulation extends only 100 yards from Pier 66, enforced 30 minutes prior to, during and 30 minutes following the parade of ships and aerial demonstration. The evolution of the safety zone for this annual event has resulted in smaller safety zones to better accommodate all waterway users while promoting safety on navigable waters. In addition, during this event each Navy ship has a Naval Vessel Protection Zone (NVPZ; 33 CFR 165 Subpart G) surrounding it. The NVPZ is a moving zone around each Navy ship that establishes a 100 yard no entry zone and 500 yard no wake zone. This may result in a combined exclusion area of the NVPZ and the 100 yard safety zone during times of a close approach and departure from the pier. The coupling of these zones could result in the appearance of a larger zone being enforced; however, they are two separate zones. Similarly, another comment stated that the proposed zone was enforced for five days in 2010 instead of the published few hours. The zone that was enforced for multiple days in 2010 was the NVPZ around the USS KIDD that was moored at Pier 66 for the duration of Fleet Week. The 100 yard safety zone which will be permanently established by this Final Rule will only be enforced for a few hours on the day of the Parade of Ships.

One comment stated if the public is genuinely at risk, then the fleet should conduct its naval celebration somewhere else. The public is only at risk if located within this safety zone while this event is taking place; therefore it is reasonable to place temporary vessel movement restrictions in this area for this short period of time to ensure maritime safety.

One comment stated the revised proposed rule is essentially the same as the first proposed rule. The Coast Guard introduced changes to this regulation in the SNPRM to include revisions to the enforcement dates, times and location for this safety zone in response to the 70 comments received on the NPRM. The reasons for issuance and the safety concerns mitigated by this rule remain unchanged.

One comment requested acknowledgement of their comment be sent via mail to the sender. The Coast Guard understands and empathizes with your concern; however, public comments made via regulations.gov are posted, publicly accessible and result in a tracking number, thereby providing notice of receipt of your comment. Additionally, the Coast Guard cannot accept the administrative burden associated with notification of individual receipt of comments, especially when notification has already been provided via this Web site.

Two comments stated that the *www.regulations.gov* Web site would not accept the video file format desired for submission of videotape footage. Comments may be submitted in numerous ways. Although regulations.gov did not support the file format for the video comment, other means remained available to submit the video to the docket. Four methods for submitting comments have been detailed in both the NPRM and the SNPRM: the Federal eRulemaking Portal, fax, mail and hand delivery.

One comment stated that mailing videos to the address provided in the proposed rule does not necessarily mean the videos would be entered into the record. The APA requires all received public comments and documents to be entered into the docket and responded to via subsequent rulemaking documents in the regulatory process.

One comment stated the Coast Guard failed to follow-through on personally contacting a citizen to notify them of publication of this regulation. The Coast

Guard has complied with the APA in drafting and informing the public of this regulation. We exceeded these requirements by issuing a press release to notify and solicit public participation and comment on the SNPRM.

Two comments stated the proposed rule was not narrowly tailored to meet a legitimate government interest. The revisions made in the SNPRM including refinement to limit the time of enforcement of this safety zone has resulted in the most minimal zone in size and duration to adequately provide safety for all waterway users during this event. Additional narrowing of the zone would adversely affect efficient staging of the on-scene patrol vessels to enforce this safety zone thereby decreasing the effectiveness of this zone to ensure safety.

Initial Enforcement

The Coast Guard will enforce the safety zone in 33 CFR 165.1330 on August 3, 2011. The zone will be active from 8 a.m. until 8 p.m. and be enforced thirty minutes prior to, during, and thirty minutes following the Parade of Ships which will occur at approximately 2 p.m.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This rule is not a significant regulatory action because it is short in duration and minimal in size.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit the safety zone during times of annual enforcement. This safety zone will not have a significant impact on a substantial number of small entities for the following reasons. This safety zone will be activated and thus subject to enforcement for a short duration and is minimal in size.

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), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may 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 does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g.), of the Instruction. This rule involves a safety zone extending 100 yards from Pier 66, Elliott Bay, WA which will be activated and thus subject to enforcement, 30 minutes prior to and 30 minutes following scheduled annual parade of ships events. An 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Section 165.1330 is added to read as follows:

§ 165.1330 Safety Zone; Fleet Week Maritime Festival, Pier 66, Elliott Bay, Seattle, Washington.

(a) *Location.* The following area is a safety zone: All waters extending 100 yards from Pier 66, Elliott Bay, WA within a box encompassed by the points, 47°36.719′ N, 122°21.099′ W; 47°36.682′ N, 122°21.149′ W; 47°36.514′ N, 122°20.865′ W; and 47°36.552′ N, 122°20.814′ W.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel operator may enter, transit, moor, or anchor within this safety zone, except for vessels authorized by the Captain of the Port or Designated Representative, thirty minutes prior to the beginning, during and thirty minutes following the conclusion of the Parade of Ships. For the purpose of this rule, the Parade of Ships includes both the pass and review of the ships near Pier 66 and the aerial demonstrations immediately following the pass and review. The Captain of the Port may be assisted by other federal, state, or local agencies as needed.

(c) *Authorization.* In order to transit through this safety zone, authorization must be granted by the Captain of the Port, Puget Sound, or their Designated Representative. All vessel operators desiring entry into this safety zone shall gain authorization by contacting either the on-scene U.S. Coast Guard patrol craft on VHF Ch 13 or Ch 16, or Coast Guard Sector Puget Sound Joint Harbor Operations Center (JHOC) via telephone at (206) 217–6002. Requests shall indicate the reason why movement within the safety zone is necessary and the vessel's arrival and/or departure facility name, pier and/or berth. Vessel operators granted permission to enter this safety zone will be escorted by the on-scene patrol until no longer within the safety zone.

(d) *Enforcement Period.* This rule is enforced annually during the parade of ships which typically occurs on a Wednesday during the last week of July or the first week in August from 8 a.m. until 8 p.m. unless cancelled sooner by the Captain of the Port.

Dated: May 9, 2011.

S.J. Ferguson,

Captain, U. S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2011–12675 Filed 5–23–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0190]

RIN 1625–AA00

Safety Zone; Marysville Days Fireworks, St. Clair River, Marysville, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on St. Clair River, Marysville, MI. This zone is intended to restrict vessels from a portion of St. Clair River during the Marysville Days Fireworks.

DATES: This rule is effective and enforced from 10:15 p.m. through 10:45 p.m. on June 24, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0190 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0190 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Katie Stanko, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9508, e-mail *Katie.R.Stanko@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM)

with respect to this rule because waiting for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards associated with maritime fireworks displays.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Delaying the effective date of this rule would be impracticable and contrary to the public interest because it would inhibit the Coast Guard from ensuring the safety of vessels and the public during the fireworks display.

Background and Purpose

On June 24, 2011, fireworks will be launched from a point on land near the Marysville Municipal Park, adjacent to the St. Clair River, to commemorate Marysville Day. The temporary safety zone created by this rule is necessary to ensure the safety of vessels and spectators from hazards associated with that fireworks display. Such hazards include obstructions to the waterway that may cause marine casualties, the explosive danger of fireworks, and debris falling into the water that may cause death, serious bodily harm, or property damage. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property in the vicinity of this event and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of the Marysville Days Fireworks Display. The fireworks display will occur between 10:15 p.m. through 10:45 p.m. on June 24, 2011.

The safety zone will encompass all waters on St. Clair River within a 600 foot radius of the fireworks launch site located on land at position 42°54′25″ N, 082°27′58″ W from 10:15 p.m. until 10:45 p.m. on June 24, 2011. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone around the launch platform will be relatively small and exist for only a minimal time. Thus, restrictions on vessel movement within any particular area of the St. Clair River 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 will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in this portion of St. Clair River between 10:15 p.m. through 10:45 p.m. on June 24, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities because vessels can easily transit around the zone. The Coast Guard will give notice to the public via a Local Notice to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may 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 does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add section § 165.T09–0190 to read as follows:

§ 165.T09–0190 Safety zone; Marysville Days Fireworks, St. Clair River, Marysville, MI.

(a) *Location.* The safety zone will encompass all U.S. navigable waters on the St. Clair River within a 600 foot radius of the fireworks launch site located on land at position 42°54′25″ N, 082°27′58″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective and enforcement period.* This rule is effective and will be enforced from 10:15 p.m. through 10:45 p.m. on June 24, 2011.

(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 Detroit, 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 Detroit or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so.

(5) 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 or his on-scene representative.

Dated: April 27, 2011.

E.J. Marohn.

Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 2011–12676 Filed 5–23–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0390]

RIN 1625–AA00

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

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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

DATES: This rule is effective from 9 p.m. on July 2, 2011, until 10 p.m. on July 3, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0390 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0390 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail CWO Carlos Hernandez, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5583, e-mail *Carlos.A.Hernandez@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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

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

Background and Purpose

On July 2, 2011 the Wicomico Church will sponsor a fireworks display on the Great Wicomico River at position 37°50′31″ N/076°19′42″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, access to the Great Wicomico River within 420 feet of the fireworks launching platform will be temporarily restricted.

Discussion of Rule

The Coast Guard is establishing a safety zone on specified waters of the Great Wicomico River in the vicinity of Mila, Virginia. The fireworks will be launched from land adjacent to the Great Wicomico River and the safety zone is intended to protect mariners from any fall out that may enter the water. This safety zone will encompass all navigable waters within 420 feet of the fireworks launching platform located at position 37°50′31″ N/076°19′42″ W (NAD 1983). This safety zone will be established in the interest of public safety during the Wicomico Community Fireworks event and will be enforced from 9 p.m. until 10 p.m. on July 2, 2011, with a rain date of 9 p.m. until 10 p.m. on July 3, 2011. Access to the safety zone will be restricted during the specified date and times. Except for individuals responsible for launching the fireworks and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

Regulatory Analyses

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

Regulatory Planning and Review

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

Small Entities

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

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

The rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in that portion of the Great Wicomico River from 9 p.m. until 10 p.m. on July 2, 2011, with a rain date of 9 p.m. until 10 p.m. on July 3, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone will only be in place for a limited duration. (ii) Before the enforcement period of July 2, 2011, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

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 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not affect 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 does not create an environmental risk to health or risk to safety that may 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 does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add Temporary § 165.T05–0390, to read as follows:

§ 165.T05–0390 Safety Zone; Wicomico Community Fireworks, Great Wicomico River, Mila, VA.

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

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

(c) *Regulation:*

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

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

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

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

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

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

(d) *Enforcement period:* This regulation will be enforced from 9 p.m.

until 10 p.m. on July 2, 2011, with a rain date of 9 p.m. until 10 p.m. on July 3, 2011.

Dated: May 12, 2011.

Mark S. Ogle,

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

[FR Doc. 2011–12677 Filed 5–23–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Pamlico Sound and Adjacent Waters, NC; Danger Zones for Marine Corps Operations

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is amending its regulations to establish a new danger zone. This danger zone will enable the Marine Corps to control access and movement of persons, vessels and objects within the danger zone during live fire training exercises. The amendment is necessary to protect the public from potentially hazardous conditions which may exist as a result of use of the area by the United States Marine Corps.

DATES: *Effective date:* June 23, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922, or Mr. Richard Spencer, Wilmington District, Corps of Engineers, Regulatory Division, at (910) 251–4172 or by e-mail at *richard.k.spencer@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the danger zone regulations at 33 CFR part 334 by adding 334.420 (b)(1)(v) which establishes an Intermittent Danger Zone abutting the existing 1.8 mile Danger Zone [§ 334.420(b)(1)(i)] in the Pamlico Sound and adjacent waters, Carteret County, North Carolina. The public is currently restricted from access to the existing 1.8 mile radius circular area and has limited access to three additional 0.5 mile radius circular danger zones [§ 334.420(b)(1)(ii)(iv)] but has unrestricted access to the remaining surrounding waters. The current military training mission requires enhanced public safety and protection of vessels that operate in the vicinity of the Bombing Target-11 range. This danger zone in the Pamlico Sound abuts the existing 1.8 mile radius danger zone and extends out to 2.5 miles from the common center point. Establishment of this additional danger zone will allow the Marine Corps to minimize the public safety hazard resulting from the increased use of .50 Caliber weapons firing from rotary-wing aircraft and small boats during training exercises at Bombing Target-11 Range.

The proposed rule was published in the October 22, 2010, issue of the **Federal Register** (75 FR 65278) with the docket number COE–2010–0037 and one comment was received. The commenter expressed concerns over the loss of access to fishing areas as a result of the intermittent danger zone. The Marine Corps changed the number of consecutive days of operations per month from seven to five as a result of comments received during their National Environmental Policy Act process and public outreach. This modification was designed to minimize the impact on the public while allowing the Marine Corps to provide appropriate training for our service personnel as is required by law. The intermittent expansion of the prohibited area would be implemented between 4 p.m. to 11 p.m., for a maximum of five consecutive weekdays (no weekends) per month, from February through November. The additional 3,360-acre water area would be temporarily removed from public use a maximum of 50 seven-hour periods per year.

Procedural Requirements

A. Review Under Executive Order 12866

This final rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

B. Review Under the Regulatory Flexibility Act

This final rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments). The economic impact of the amendment to this danger zone does not have an effect on the public, does not result in a navigational hazard, or interfere with existing waterway traffic. Therefore, this final rule does not have a significant economic impact on small entities.

C. Review Under the National Environmental Policy Act

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps determined the amendment does not have a significant impact on the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment was prepared after the public notice period closed. The environmental assessment may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

D. Unfunded Mandates Act

This final rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons stated in the preamble, the Corps is amending 33 CFR part 334 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. In § 334.420 add paragraphs (b)(1)(v) and (b)(2)(iii) to read as follows:

§ 334.420 Pamlico Sound and adjacent waters, N.C.; danger zones for Marine Corps operations.

* * * * *

(b) * * *

(1) * * *

(v) The waters within a circular band with an inner radius of 1.8 statute miles and an outer radius of 2.5 statute miles having its center at latitude 35°02′12″, longitude -76°28′00″.

(2) * * *

(iii) The areas described in paragraph (b)(1)(v) of this section shall be used as a strafing area. Practice and dummy ammunition will be used. Operations will be conducted on five consecutive

days (Monday through Friday) per month during the months of February through November between the hours of 4 p.m. to 11 p.m. The block training dates will be scheduled two weeks in advance of the actual training start date. Marine Corps Air Station Cherry Point will have a call-in number for public use to provide information on the current use of the training area. The Notification to Mariners System will also be utilized to inform the public on the status of the training area. No vessel or person shall enter the area during the scheduled block training session except for such vessels as may be directed by the enforcing agency to enter on assigned duties. The area will be patrolled and vessels "buzzed" by the patrol plane prior to the conduct of operations in the area. Vessels or personnel which have inadvertently entered the danger zone shall leave the area immediately upon being so warned.

* * * * *

Dated: May 17, 2011.

Michael G. Ensch,

Chief, Operations and Regulatory Directorate of Civil Works.

[FR Doc. 2011–12815 Filed 5–23–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Menominee River, Marinette Marine Corporation Shipyard, Marinette, WI

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is amending its regulations to establish a restricted area in the waters of the Menominee River at the Marinette Marine Corporation Shipyard in Marinette, Wisconsin. The restricted area is necessary to provide adequate protection of U.S. Navy combat vessels, their materials, equipment to be installed therein, and crew, while located at the property of Marinette Marine Corporation.

DATES: *Effective date:* June 23, 2011.

ADDRESSES: Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or by e-mail at *david.b.olson@usace.army.mil* or Mr. Todd Vesperman, U.S. Army Corps of Engineers, St. Paul District, Regulatory Branch, at 202–761–4614 or by e-mail at *todd.m.vesperman@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Pursuant to its authorities under Section 7 of the Rivers and Harbors Act of 1917 (40 State 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending restricted area regulations at 33 CFR part 334 by adding § 334.815 to establish a restricted area in the waters of the Menominee River at the Marinette Marine Corporation Shipyard in Marinette, Wisconsin. Marinette Marine Corporation, as shipbuilder of Littoral Combat Ships, has requested on behalf of the Department of Navy, that the restricted area be established to provide adequate protection of U.S. Navy combat vessels, their materials, equipment to be installed therein, and crew, while located at the property of Marinette Marine Corporation.

The proposed rule was published in the November 10, 2010, edition of the **Federal Register** (75 FR 69034) with the docket number COE–2010–0041. No comments were received. On November 12, 2010, the Corps St. Paul District issued a local public notice soliciting comments on the proposed rule from all known interested parties and no comments were received. After the proposed rule was published to solicit comments, the Department of the Navy requested that the rule text be changed so that the restricted area could be marked with a signed floating buoy line instead of a signed floating barrier. That change has been made to the final rule.

Procedural Requirements

a. *Review Under Executive Order 12866.* This rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. *Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments). The Corps determined that the establishment of the new restricted area would not have a significant economic impact on a substantial number of small entities.

c. *Review Under the National Environmental Policy Act.* An environmental assessment (EA) has been prepared. We have concluded that the establishment of the restricted area will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. The final EA and Finding of No Significant Impact may be reviewed at the District Office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. *Unfunded Mandates Reform Act.* This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found, under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rule.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons stated in the preamble, the Corps is amending 33 CFR Part 334 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.815 to read as follows:

§ 334.815 Menominee River, at the Marinette Marine Corporation Shipyard, Marinette, Wisconsin; Naval Restricted Area.

(a) *The area.* The waters 100 feet from Marinette Marine Corporation's pier defined by a rectangular shaped area on the south side of the river beginning on shore at the eastern property line of Marinette Marine Corporation at latitude 45°5′58.8″ N, longitude 087°36′56.0″ W; thence northerly to latitude 45°5′59.7″ N, longitude 087°36′55.6″ W; thence westerly to latitude 45°6′3.2″ N, longitude 087°37′9.6″ W; thence southerly to latitude 45°6′2.2″ N, longitude 087°37′10.0″ W; thence easterly along the Marinette Marine Corporation pier to the point of origin. The restricted area will be marked by a lighted and signed floating buoy line.

(b) *The regulation.* All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and local or state law enforcement vessels, are prohibited from entering the restricted area when marked by a signed floating buoy line without permission from the United States Navy, Supervisor of Shipbuilding Gulf Coast or his/her authorized representative.

(c) *Enforcement.* The regulation in this section shall be enforced by the United States Navy, Supervisor of Shipbuilding Gulf Coast and/or such agencies or persons as he/she may designate.

Dated: May 17, 2011.

Michael G. Ensch,

Chief, Operations and Regulatory, Directorate of Civil Works.

[FR Doc. 2011–12816 Filed 5–23–11; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0355; FRL–9303–9]

Revisions to the California State Implementation Plan, Placer County Air Pollution Control District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Placer County Air Pollution Control District (PCAPCD) and Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from surface coating of metal parts and products. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 25, 2011 without further notice, unless EPA receives adverse comments by June 23, 2011. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0355, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov*.
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

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

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

Table of Contents

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
PCAPCD	245	Surface Coating of Metal Parts and Products	8/20/09	1/10/10
VCAPCD	74.12	Surface Coating of Metal Parts and Products	4/8/08	1/10/10

On February 4, 2010, EPA determined that both submittals met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

There are no previous versions of PCAPCD Rule 245 in the SIP.

We approved an earlier version of VCAPCD Rule 74.12 into the SIP on 10/25/2005(70FR61561).

C. What is the purpose of the submitted rules?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. Both PCAPCD Rule 245 and VCAPCD Rule 74.12 limit emissions of VOC from the application of coatings, coating removers (strippers), surface preparation materials, and cleanup materials in metal parts and products coating operations. EPA's technical support documents (TSD) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and (b)(2)), and must not relax existing requirements (see sections 110(l) and 193). PCAPCD and VCAPCD regulate an ozone nonattainment area (see 40 CFR part 81), so PCAPCD Rule 245 and VCAPCD Rule 74.12 must fulfill RACT.

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

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

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

3. "Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coating," EPA–453/R–08–003, September 2008.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that we recommend for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by June 23, 2011, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on July 25, 2011. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct

costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rules, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 25, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(378)(i)(B) and (C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(378) * * *

(i) * * *

(B) Placer County Air Pollution Control District.

(*1*) Rule 245, "Surface Coating of Metal Parts and Products," amended on August 20, 2009.

(C) Ventura County Air Pollution Control District.

(*1*) Rule 74.12, "Surface Coating of Metal Parts and Products," adopted on April 8, 2008.

* * * * *

[FR Doc. 2011–12611 Filed 5–23–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[EPA–HQ–RCRA–2010–0851; FRL–9310–2]

Land Disposal Restrictions: Site-Specific Treatment Variance for Hazardous Selenium-Bearing Waste Treated by U.S. Ecology Nevada in Beatty, NV and Withdrawal of Site-Specific Treatment Variance for Hazardous Selenium-Bearing Waste Treatment Issued to Chemical Waste Management in Kettleman Hills, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Direct Final Rule.

SUMMARY: Because EPA received adverse comment, we are withdrawing the Direct Final rule that granted a site-specific treatment variance to U.S. Ecology Nevada in Beatty, Nevada and withdrew an existing site-specific treatment variance issued to Chemical Waste Management, Inc. in Kettleman Hills, California. The Direct Final rule pertains to the treatment of a hazardous waste generated by the Owens-Brockway Glass Container Company in Vernon, California that is unable to meet the concentration-based treatment standard for selenium established under the Land Disposal Restrictions program. EPA also issued a parallel proposal to be used as the basis for the final action in the event that EPA received any adverse comments on the Direct Final rule.

DATES: Effective May 24, 2011, EPA withdraws the Direct Final rule published at 76 FR 18921 on April 6, 2011.

FOR FURTHER INFORMATION CONTACT: For more information, contact Jesse Miller, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (MC 5304 P), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (703) 308–1180; fax (703) 308–0522; or *miller.jesse@epa.gov.*

SUPPLEMENTARY INFORMATION: Because EPA received adverse comment, we are withdrawing the Direct Final rule that amended the Land Disposal Restrictions treatment standards (40 CFR part 268.44(o)) by granting a site-specific treatment variance to U.S. Ecology Nevada in Beatty, Nevada and withdrawing an existing site-specific treatment variance issued to Chemical Waste Management, Inc. in Kettleman Hills, California, published on April 6, 2011 at 76 FR 18921. We stated in that Direct Final rule that if we received adverse comment by May 6, 2011, the Direct Final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. We subsequently received adverse comment on that Direct Final rule. We will address those comments in any subsequent final action, which will be based on the parallel proposed rule also published on April 6, 2011 at 76 FR 18921. As stated in the Direct Final rule and the parallel proposed rule, we will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, and Variances.

Dated: May 17, 2011.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

Accordingly, the amendments to the rule published on April 6, 2011 (76 FR 18921) are withdrawn as of May 24, 2011.

[FR Doc. 2011–12783 Filed 5–23–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9310–8]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is publishing a direct final Notice of Partial Deletion of the remaining portions of Operable Unit 9 (OU9), the Residential Populated Areas, of the California Gulch Superfund Site (Site), located in Lake County, Colorado, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability

Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final partial deletion is being published by EPA with the concurrence of the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE) because EPA has determined that all appropriate response actions at these identified parcels under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this partial deletion does not preclude future actions under Superfund.

This partial deletion pertains to the remaining portions of OU9, the Residential Populated Areas. Subunits A and B, residential waste rock piles, and the parks and playgrounds within Operable Unit 9 were partially deleted from the NPL on January 30, 2002. In addition, OU2, OU8, and OU10 have been partially deleted from the NPL. The Yak Tunnel (OU1), D&RGW Slag Piles and Easement (OU3), Upper California Gulch (OU4), ASARCO Smelter/Colorado Zinc-Lead Mill Site (OU5), Stray Horse Gulch (OU6), Apache Tailing (OU7), Arkansas River Floodplain (OU11), and Site-wide Surface and Groundwater Quality (OU12) will remain on the NPL and are not being considered for deletion as part of this action.

DATES: This direct final partial deletion is effective July 25, 2011 unless EPA receives adverse comments by June 23, 2011. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *http://www.regulations.gov*. Follow on-line instructions for submitting comments.
- *E-mail: Linda Kiefer, kiefer.linda@epa.gov*
- *Fax:* (303) 312–7151.
- *Mail:* Linda Kiefer, Remedial Project Manager, Environmental Protection Agency, Region 8, Mail Code 8EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129.
- *Hand delivery:* Environmental Protection Agency, Region 8, Mail Code 8EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1983–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket

All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. EPA Region 8, Superfund Records Center, 1595 Wynkoop Street, Denver, CO 80202. (303) 312–6473 or toll free (800) 227–8917; Viewing hours: 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

and

Lake County Public Library, 1115 Harrison Avenue, Leadville, CO 80461, (719) 486–0569

FOR FURTHER INFORMATION CONTACT: Linda Kiefer, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, Mailcode EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6689 e-mail: *kiefer.linda@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 8 is publishing this direct final Notice of Partial Deletion for the remaining portions of Operable Unit 9 (OU9), Residential Populated Areas, of the California Gulch Superfund Site (Site), from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995). As described in 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective *July 25, 2011* unless EPA receives adverse comments by *June 23, 2011*. Along with this direct final Notice of Partial Deletion, EPA is co-publishing a Notice of Intent for Partial Deletion in the "Proposed Rules" section of the Federal Register. If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely withdrawal of this direct final Notice of Partial Deletion before the effective date of the partial deletion and the partial deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments

already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the remaining portion of OU9, Residential Populated Areas, of the California Gulch Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to partially delete the Site parcels from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Partial Deletion Procedures

The following procedures apply to the deletion of the remaining portions of OU9 of the Site:

(1) EPA has consulted with the State of Colorado prior to developing this direct final Notice of Partial Deletion and the Notice of Intent for Partial Deletion co-published in the "Proposed Rules" section of the **Federal Register**.

(2) EPA has provided the state 30 working days for review of this notice and the parallel Notice of Intent for Partial Deletion prior to their publication today, and the State, through the Colorado Department of Public Health and Environment, has concurred on the partial deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Partial Deletion, a notice of the availability of the parallel Notice of Intent for Partial Deletion is being published in a major local newspaper, the Leadville Herald Democrat. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

(4) The EPA placed copies of documents supporting the partial deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Partial Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for further response actions, should future conditions warrant such actions.

IV. Basis for Partial Site Deletion

The following information provides EPA's rationale for deleting the remaining portion of OU9, Residential Populated Areas of the California Gulch Superfund Site from the NPL.

Site Background and History

The California Gulch Superfund Site (Site), EPA ID No. COD980717938, is located in Lake County, Colorado approximately 100 miles southwest of Denver. The Site was proposed for inclusion on the National Priorities List, December 30, 1982, 47 FR 58476, and listed on September 8, 1983, 48 FR 40,658. The Site is in a highly mineralized area of the Colorado Rocky Mountains covering approximately 18 square miles of a watershed that drains along California Gulch to the Arkansas River. The Site includes the City of Leadville, various parts of the Leadville Historic Mining District, Stringtown, and a section of the Arkansas River from the confluence of California Gulch to the confluence of Two-Bit Gulch. Being a Rocky Mountain community, the City of Leadville (population 2,801) has a high percentage of second homes. Commercial, residential, and industrial properties and vacant lots are mixed in together. Mining, mineral processing, and smelting activities have occurred at the Site for more than 130 years. Mining in the district began in 1860, when placer gold was discovered in California Gulch. As the placer deposits were exhausted, underground workings became the principal method for removing gold, silver, lead and zinc ore. As these mines were developed, waste rock was excavated along with the ore and placed near the mine entrances. Ore was crushed and separated into metallic concentrates at mills, with mill tailing generally slurried into tailing impoundments. The Leadville area was the site of extensive gold, silver, lead and zinc mining, milling and smelting operations. Most of the facilities ceased operations around 1900, although several facilities continued operations into the 1920s (Western Zinc) and the 1960s (AV Smelter).

All of the mines within the Site boundaries are presently inactive, and all of the mills and smelters have been demolished. As a result of these operations, the Site contains mill tailing (the fine-grained residue remaining after milling and separation has removed the metal concentrates form the ore) impoundments, fluvial deposits, slag piles, mine waste rock piles (mine development rock and low grade ore removed to gain access to an ore body, and often deposited near adits and shaft openings), and mine water drainage tunnel which have further distributed heavy metals throughout the area. In addition, smelters, which previously operated at the Site, have historically been a source of heavy metals from dust and stack emissions.

The Site was placed on the NPL due to concerns regarding the impact of acidic and metals laden mine drainage on surface waters leading to California Gulch and the impact of heavy metals loading into the Arkansas River. A Site-wide Phase I Remedial Investigation

(Phase I RI), which primarily addressed surface and groundwater contamination, was issued in January 1987. As a result of the Phase I RI, EPA identified the first operable unit, the Yak Tunnel, to address the largest single source of metallic loading. A number of additional Site-wide studies followed the Phase I RI.

EPA agreed, pursuant to a May 2, 1994 Consent Decree (1994 CD), to divide the Site into 12 operable units (OUs). With the exception of OU12, the operable units pertain to distinct geographical areas corresponding to areas of responsibility for the identified responsible parties and/or to distinct sources of contamination. The OUs are as follows:

1. Yak Tunnel/Water Treatment Plant
2. Malta Gulch Tailing Impoundments and Lower Malta Gulch Fluvial Tailing
3. D&RGW Slag Piles and Easement
4. Upper California Gulch
5. ASARCO Smelter Sites/Slag/Mill Sites
6. Starr Ditch/Stray Horse Gulch/Lower Evans Gulch/Penrose Mine Waste Pile
7. Apache Tailing Impoundments
8. Lower California Gulch
9. Residential Populated Areas
10. Oregon Gulch
11. Arkansas River Valley Floodplain
12. Site-wide Surface and Groundwater

To date, OU2; OU8; OU10; and parts of OU9—Subunits A and B, residential mine waste rock piles, and the parks and playgrounds—have been partially deleted from the NPL.

OU9 Background and History

The soils in OU9 have been highly disturbed by human activities. The yards of most residences have grass cover over either native soil or imported fill. The sources of fill materials have included areas outside the Site and waste rock and tailing from California and Stray Horse Gulch. Even though mining operations are no longer active at the Site, waste products and other residues from past mining and smelting activities are present in OU9—some as visible features. Additionally, smelter emissions and slag may have contaminated some residential soils.

OU9 includes residential area soils in those portions of the Site where the land use is residential or that were zoned as residential/populated areas and as low-density residential areas on or before September 2, 1999. A map of OU9, named OU9 Partial Deletion—Residential Areas, can be found in the docket at *http://www.regulations.gov* under California Gulch. Residential area soils are defined as soils in the residential area of the Site (see Attachment A of the 1994 CD) which may have been impacted by past smelting and mining activities. This encompasses the City of Leadville, Stringtown, and outlying areas zoned for residential use. Included are residential properties, yards, parks, vacant lots, schools yards, playgrounds, and community use areas, including unpaved streets and alleys. Additionally OU9 includes 38 mine waste piles located within the populated areas of eastern Leadville. For ease in determining compliance with blood monitoring performance standards, OU9 was geographically divided into statistical subunits A through G.

Subunits A and B (the shaded area of OU9 on the map in the docket), 38 residential waste rock piles, and the parks and playgrounds within OU 9 were partially deleted from the NPL on January 30, 2002.

The remaining portion of OU9 (shown in yellow on the map in the docket) are the subject of this deletion. EPA is the lead agency for OU9; Colorado Department of Public Health and Environment (CDPHE) is the support agency. Under the 1994 CD, ASARCO assumed responsibility for OU9.

Remedial Investigations and Feasibility Study (RI/FS)

Remedial Investigations

The State of Colorado, EPA and certain Potentially Responsible Parties have conducted various studies and investigations to evaluate the nature and extent of contamination within the Site. In 1991, Remedial Investigations (RIs) began for several areas within the Site, including mine waste rock piles, tailing disposal areas, surface water and aquatics, groundwater, smelter sites, residential/populated area soils, slag piles, and terrestrial studies. These studies have determined lead in soils to be the primary contaminant of concern in OU9.

Interim Response—The Kids First Program

ASARCO and many community members argued that there are numerous environmental sources of lead in the residential areas of Leadville. One primary source was mining-related primary sources such tailing and mine waste piles. Other primary sources include lead-containing paint on interior and exterior surfaces of homes and lead found in food, water, and residential soils. As recommended by ASARCO and the community, the interim response was designed to reduce overall lead-related risk to children in Leadville, including responses that address sources that would not normally be remediated under CERCLA authorities. As part of the 1994 CD with EPA and the State, ASARCO agreed to undertake actions to address all sources of lead in lieu of soil removal only at each residence. To determine the effectiveness of the actions, the level of lead in children's blood was voluntarily monitored and performance standards in relation to concentrations of lead in the blood of children were established.

In 1995, ASARCO began implementing the Lead Risk Reduction Program (LRRP), more commonly known as the Kids First Program (KF). ASARCO agreed to operate KF as an interim response action until EPA selected a remedy for OU9.

The purpose of KF, a risk reduction response program based on voluntary participation, was to: (1) Provide information to the community, and (2) reduce children's exposure to secondary sources of lead. KF consisted of a variety of services and remedial response activities designed to: (1) Gather information from the community, (2) identify residences for which response actions are needed, (3) plan and prioritize the risk reduction responses for these residences, (4) perform the risk reduction responses, and (5) provide additional information and services to the community.

Initially KF targeted residences where sample soil lead levels were found above 3,500 mg/kg because EPA established an interim response level of 3,500 mg/kg lead for Leadville residential soils. The basis for this value is presented in the 1994 CD, along with a discussion of trigger criteria for other significant environmental media (dust, paint and water). These trigger criteria were used by the KF work group to identify and prioritize locations for response actions.

Residences with children that had blood-lead levels greater than 10 µg/dl, measured during the 1991 Blood-Lead Study or any subsequent blood-lead monitoring, were targeted for priority response in the program.

Information used in the evaluation of residences and the selection of appropriate response actions (if needed) came from a variety of sources. Response programs included within KF were:

- The blood-lead monitoring program by Lake County Health Department;
- A lead information hotline and a door-to-door survey within priority exposure areas; and

• Additional environmental sampling and property assessment.

The Lake County Health Department managed the voluntary blood-lead monitoring program, which was funded by ASARCO. The blood-lead monitoring program was a key component of the interim response program. Ongoing blood-lead monitoring was provided upon request for children below the age of 72 months (6 years) and for pregnant/nursing women. The data were used as one means of identifying individuals who had blood-lead levels greater than 10 µg/dl. The data were also used in the finalization of the Baseline Risk Assessment.

All homeowners or residents who responded via the hotline/office or door-to-door surveys received information about the program. The Information Hotline and the door-to-door surveys resulted in the need for additional environmental sampling of soils, paint, dust, water, and blood-lead levels. Environmental sampling was conducted if the residence: (1) Was located in the 3,500 mg/kg lead soils priority area, (2) had a child with a blood-lead level greater than 10 µg/dl, (3) had a pregnant or nursing woman in the home, (4) was known to have paint in poor condition or known to have another possible lead source (lead pipes, certain hobbies, *etc.*), or (5) was requested by a resident who is not within the designated priority risk area.

The first year remediations were performed at 37 properties in accordance with Action Memoranda prepared for each property. The KF work group developed and approved all action and no-action determinations. The property owners consented on all investigations and remediations.

KF integrated a variety of lead toxicity intervention and abatement methods. Additionally, KF addressed reducing children's exposure to lead in soils, dust-containing lead in residences, and additional lead sources such as paint and tap water. For these reasons, KF was presented as an alternative in the feasibility study when it was revised and renamed the Lake County Community Health Program (LCCHP).

Risk Assessments

Concurrent with the interim response, numerous risk assessments were conducted as part of the investigation. They included Baseline Human Health Risk Assessments (BRAs): Part A (Weston 1996), Part B (Weston 1996), and Part C (Weston 1995); Ecological Risk Assessment for Terrestrial Ecosystems (Weston 1997); Surface Water Human Health Risk Assessment (Golder 1996); Groundwater Baseline Human Health Rick Assessment (Golder, June 1996) and Baseline Aquatic Ecological Risk Assessment (Weston 1995).

The Baseline Human Health Risk Assessments (BRAs) concluded that lead was the only contaminant of concern (COC) for OU9. There are no locations on-Site where antimony, barium, cadmium, beryllium, chromium, copper, mercury, nickel, silver, thallium, or zinc are of significant concern in residential soil. The risk assessment also concluded that non-lead metals (including arsenic and manganese) in residential soils do not pose a significant health risk to residents.

The risk assessment for lead was supported by a large body of Site-specific data. Included were: (1) Extensive measurements of lead in soil and dust in residential locations, (2) an extensive demographics survey, data on lead levels in water and paint (both interior and exterior), (3) data on the physical and chemical forms of lead at various locations around the community, and (4) an informative community-wide blood-lead study involving 314 children (about 65% of the total population of children at the Site). This data was used to support two parallel lines of investigation and assessment. The first of these employed EPA's Integrated Exposure Uptake and Biokinetic (IEUBK) model to calculate the expected impact of lead levels in soil and dust on blood-lead levels in area children. The second approach compared the measured blood-lead values in area children with relevant national blood-lead statistics in order to help evaluate the current effects of actual Site exposure to lead.

Several ecological risk assessments were performed on a site-wide basis for the California Gulch Site. These are available in the docket or on the EPA Web site, *http://www.epa.gov/region8/superfund/co/calgulch/*. These assessments showed a potential unacceptable risk to small mammals and breeding birds. However, given the data available, there was little evidence of population-level effects on small mammals or breeding birds. In addition, calculated ecological risk due to potential exposure to tailing or waste rock media found in other operable units was higher than risks resulting from potential exposure to surrounding soils found in OU9.

Feasibility Study (FS)

The Final Residential Soil Feasibility Study, completed by Golder Associates in November of 1998, evaluated seven remedial alternatives to address the residential soils of properties, yards and open space areas within OU9 where lead levels exceeded the trigger level of 3,500 mg/kg.

One alternative in the FS was the LCCHP, a revised version of the KF used during the interim response. The LCCHP combined blood-lead monitoring, education, community awareness, and residence specific response actions reduced the potential for children to be exposed to lead in Leadville and surrounding areas. This program addressed lead in soil and dust, interior and exterior paint, plumbing fixtures, and dietary and household sources. It also included institutional controls to ensure effectiveness of the LCCHP. Operation and maintenance activities included LCCHP administration and the blood-lead monitoring program.

Selected Remedy

Signed on September 2, 1999, the OU9 Record of Decision (1999 ROD) selected a remedy for addressing lead in soils in residential population areas. The selected remedy was the LCCHP with institutional controls (ICs) to ensure the effectiveness of the LCCHP. In September 2009, an Explanation of Significant Differences required ICs for the 17 mine waste piles remaining in OU9.

The Remedial Action Objectives (RAO) from the 1999 ROD are:

• RAO–1: No more than 5% of children age 0–72 months residing within OU9, either now or in the future, should have blood-lead values exceeding 10 µg/dl.

• RAO–2: No more than 1% of children age 0–72 months residing within OU9, either now or in the future, should have blood-lead values exceeding 15 µg/dl.

• RAO–3: Reduce direct exposure of lead incurred by children which result in optimal risk reduction through effective use of resources.

LCCHP

The LCCHP combined (1) Community awareness and education, (2) residence-specific response actions to reduce the risk of lead exposure to children in Leadville and (3) blood-lead monitoring. Funding for the LCCHP was from a trust fund established by ASARCO under the 1994 CD.

LCCHP Community Awareness and Education

The LCCHP involved an extensive education and intervention program to manage lead exposure at the Site. The educational program focused on raising public awareness about risks from lead

and encouraged participation in the LCCHP. Outreach included the hotline, door-to-door contacts, public notices, mailings, publications, meetings and incentives. Education included individual face-to-face consultations with residents and customized recommendations for specific actions that reduced the residents' risk to lead exposure. The recommendations made to each resident were based on the results of environmental lead sampling at their homes and specific information collected by the program about their daily habits and activities. Follow-up education, consultation, and intervention continued with families that had young children by the Lake County Health Department through their blood-lead monitoring program; Women, Infants, and Children (WIC); and Head Start.

LCCHP Residence-Specific Actions

Through this program, Leadville residents were able to request an investigation of lead levels in soil, dust, paint, and water on their property. Properties owners could also request a re-investigation if conditions changed. The LCCHP investigated and remediated lead concentrations in soil, paint, dust, and water on a property-by-property basis. Sampling plans were designed for each individual investigated property. Action was taken when trigger levels were exceeded. All investigations and remediations were performed with the consent of the property owners. Owner contact and consent, sampling plans, analytical data, remediation activities and final closeout procedures were extensively documented. Property Documentation Reports (completion reports) were sent to property owners and are kept on file at EPA.

LCCHP Blood-Lead Monitoring

The LCCHP also included voluntary blood-lead monitoring (with financial incentives, as appropriate) for all children six years old and under, and pregnant or nursing women. As part of the program, appropriate actions were taken when the concentration of lead in blood of a child or a pregnant or nursing woman exceeded the blood-lead criterion, or when the concentration of lead exceeded a specified set of trigger criteria for one or more of the environmental media at a residence.

LCCHP Trigger Levels

These trigger criteria are summarized below:

- Blood-lead greater than or equal to 10 µg/dL;
- Soil with lead concentrations greater than or equal to 3,500 mg/Kg;
- Dust in houses with lead concentrations greater than or equal to 2,000 ppm;
- Tap water with lead concentrations greater than or equal to 15 µg/l; and
- Interior or exterior paint, in poor condition, with the following lead levels:
  - Greater than or equal to 1 mg/cm^2 triggers educational action, and
  - Greater than or equal to 6 mg/cm^2 triggers active remediation

When one or more of the trigger criteria were exceeded, a work group evaluated a range of different response actions. The most appropriate response action was determined by evaluating the nature and extent of the exceedance, overall protectiveness of the action, compliance with applicable or relevant and appropriate requirements, long-term effectiveness and permanence, short-term effectiveness, implementability, cost effectiveness, and community impacts. The work group also considered the views of the property owner, and only implemented response actions when property owners provided permission. Extensive education and intervention programs to manage lead exposure at the Site were an integral component of each action considered.

Scientific Review of LCCHP

Since the LCCHP was considered a "pilot project" that involved a number of innovative approaches, the program was (1) evaluated by a group of outside scientists and (2) included ongoing review to ensure that the program was operating as intended and that human health was being adequately protected. The ongoing review included the establishment of performance standards which when met would indicate the successful completion of the LCCHP and the beginning of operation and maintenance.

Performance Standards

The 1999 ROD provided that performance standards would be established during the remedial design phase. These performance standards were necessary to determine if the blood-lead monitoring program met the RAOs. The performance standards were set out in a July 2002 addendum to the OU9 remedial design and are summarized in the Final Methods and Standards for Evaluating the Performance of the LCCHP.

As documented in annual reports beginning in 2002, the data collected was analyzed, and the results were compared to the performance standards, expressed as goals for blood-lead levels in children, to determine the effectiveness of the program.

During the calendar year 2005, the performance standards established by EPA for the selected remedy were met. This conclusion is supported and documented in the 2005 LCCHP annual report.

The LCCHP was implemented as required by the ROD and under the Methods and Standards for Evaluating the Performance of the Program. ASARCO continued to execute the LCCHP until July 2005 when ASARCO declared bankruptcy, after which EPA managed the LCCHP soil investigations and cleanups. The work group continued the blood-lead monitoring and education/outreach programs.

Response Actions

KF conducted several time critical removal actions from October 1995 to April 2000. Under the LCCHP from April 2000 to the summer of 2009, time critical removal actions were completed on multiple residences, commercial properties and vacant lots.

From October 1995 to the summer of 2009, 1040 properties were investigated. 270 of those properties required a soil removal action. Forty properties, which may or may not have had soil removals, have had dust removed or paint repaired/replaced. The EPA conducted the last property assessment and response actions in the summer of 2009.

"Last Call"

In an effort to include any property that had not participated in the LCCHP, a "last call" for property owners to have their property investigated was given in 2006 by the EPA and ASARCO. EPA sent a letter notifying property owners of the "last call" and published several notices in the Leadville Herald Democrat. EPA completed investigations and remediation of "last call" properties in the summer of 2009.

Due to ASARCO's bankruptcy in 2005, EPA proceeded to finish the assessment and cleanup of properties that were already scheduled for work. Additionally, EPA also investigated and cleaned up properties from the "last call." Due to the short construction season in Lake County, the last Site assessment and on the ground construction work was not completed until the summer of 2009.

Institutional Controls (ICs)

On March 15, 2010, Lake County passed a resolution approving the LCCHP Phase 2 Work Plan and adopting the LCCHP Phase 2 as an IC for OU9. With the County's passing of the resolution to adopt the LCCHP Phase 2 Work Plan as an IC for OU9, remedial action was completed.

Moreover on December 23, 2009, the County also passed a resolution, which serves as an IC. The resolution amends the Lake County Land Development Code Chapter 3.2. The Lake County Building and Land Use Department (LCBLUD) is required to provide building permit applicants within the boundaries of the remaining 38 mine waste piles in OU9 with a handout regarding Best Management Practices for managing potentially contaminated soils in Lake County. Each applicant is obligated to sign a document attesting to the fact that he/she received, read and understood the Lake County Best Management handout. No building permit will be issued without the applicant's written acknowledgement provided to the LCBLUD. Additionally, written proof of approval from the CDPHE is a condition precedent to issuance of a building permit by the LCBLUD.

Operation and Maintenance

The LCCHP Phase 2 Work Plan also serves as the operations and maintenance (O & M) plan for OU9. The goal of the LCCHP Phase 2 is to maintain the progress made in reducing overall lead-related risk to children and pregnant and nursing women who live in Leadville through education, blood-lead monitoring of children, investigation when elevated blood lead is detected, and a cleanup response, if appropriate.

In addition to blood-lead monitoring, the LCCHP Phase 2 includes community education and outreach. Under the modified program, Lake County provides information to residents and families with children to promote ongoing community awareness of health risks from lead exposures. The Lake County Public Health Agency provides this information several ways, including periodic public notices in the newspaper, brochures in physicians' offices, and handouts during immunization visits. Additionally, Lake County provides counseling, education and small incentives to families who participate in the modified program's blood-lead monitoring program.

The most significant change from the LCCHP (remedial action) is that residential environmental sampling and cleanup for soil, dust and paint are only offered:

(1) When children or pregnant/nursing mothers living at a property have blood-lead levels at or above the Center for Disease Control's level of concern, currently 10 µg/dl; or

(2) At the specific recommendation of either the work group or the Lake County Public Health Agency.

The original program allowed residents to request environmental sampling with no preconditions. This service is no longer available. In addition, the work group may not offer environmental sampling if preliminary investigation indicates the source of lead exposure is solely from household items such as consumer goods, toys, candy, etc. Environmental sampling and cleanup will occur as directed by the work group and only with the consent of the resident and/or property owner.

The County and State administer the LCCHP Phase 2 with EPA oversight. The Lake County Public Health Agency monitors blood-lead concentrations in individual children who live within the County, and provides workshops and educational material to families about preventing exposure to lead. CDPHE performs data management, environmental sampling and cleanup upon recommendation of the work group.

Five-Year Review

The remedies at the entire Site, including OU9, require ongoing five-year reviews in accordance with CERCLA Section 121(c) and Section 300.430(f)(4)(ii) of the NCP. The next five-year review for the California Gulch Site is scheduled for 2012.

In the 2007 five-year review for the Site, the OU9 remedy that was determined was protective of human health and the environment. However, concerns were noted about continued protectiveness because ICs were not in place and an O & M Plan did not exist. Those concerns were resolved when the work group approved the LCCHP Phase 2 as an IC and O & M Plan for properties in OU9, and Lake County adopted ICs by resolution.

Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U. S. C. 9613(k) and CERCLA Section 117, 42 U. S. C. 9617. Documents in the partial deletion docket which the EPA relied on for recommendation for the partial deletion from the NPL are available to the public in the information repositories and a notice of availability of the Notice of Intent for Partial Deletion has been published in the Leadville Herald Democrat to satisfy public participation procedures required by 40 CFR 300.425(e)(4).

A fact sheet outlining the new LCCHP Phase 2 was presented to the public in June 2009. The public commented and EPA responded. The State, the Lake County Commissioners and the Mayor of Leadville are supportive of the deletion of OU9.

Determination That the Criteria for Deletion Have Been Met

More specifically for OU9, EPA and the State have determined that the responsible parties completed all appropriate response actions. EPA has consulted with the State, Lake County Commissioners, and the City of Leadville, Colorado, on the proposed partial deletion of OU9 from the NPL prior to developing this Notice of Partial Deletion. Through the five-year reviews, EPA has also determined that the response actions taken are protective of public health or the environment and, therefore, taking of additional remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA will finalize the next five-year review in 2012 to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at the Site above levels that allow for unlimited use and unrestricted exposure.

V. Deletion Action

The EPA, with concurrence of the State of Colorado through the Colorado Department of Public Health and Environment on February 16, 2011, has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring and five-year reviews, have been completed. Therefore, EPA is deleting the remaining portions of OU9, the Residential Populated Areas, from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective *July 25, 2011* unless EPA receives adverse comments by *June 23, 2011.* If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of partial deletion before the effective date of the partial deletion and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping

requirements, Superfund, Water pollution control, Water supply.

Dated: May 10, 2011.

James Martin,

Regional Administrator, Region 8.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by revising the entry under "California Gulch", Colorado to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
* * *	* * *	* * *	*
CO	California Gulch	Leadville	P
* * *	* * *	* * *	*

[a] * * *

P = Sites with partial deletion(s).

[FR Doc. 2011–12763 Filed 5–23–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 930792–3265]

RIN 0648–XA431

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Reopening of Commercial Penaeid Shrimp Trawling Off South Carolina

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

ACTION: Temporary rule; reopening.

SUMMARY: NMFS reopens commercial penaeid shrimp trawling, i.e., for brown, pink, and white shrimp, in the exclusive economic zone (EEZ) off South Carolina in the South Atlantic. NMFS previously closed commercial penaeid shrimp trawling in the EEZ off South Carolina on March 22, 2011. The reopening is intended to maximize harvest benefits while protecting the penaeid shrimp resource.

DATES: The reopening is effective 12:01 a.m., local time, June 7, 2011, until the effective date of a notification of a closure which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, 727–824–5305; e-mail: *Steve.Branstetter@noaa.gov.*

SUPPLEMENTARY INFORMATION: Penaeid shrimp in the South Atlantic are managed under the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Under 50 CFR 622.35(d)(1), NMFS may close the EEZ adjacent to South Atlantic states that have closed their waters to the harvest of brown, pink, and white shrimp to protect the white shrimp spawning stock that has been severely depleted by cold weather. Consistent with those procedures and criteria, after determining that unusually cold temperatures resulted in at least an 80-percent reduction of the white shrimp populations in its state waters, the state of South Carolina closed its waters on January 10, 2011, to the harvest of brown, pink, and white shrimp. South Carolina subsequently requested that the Council and NMFS implement a concurrent closure of the EEZ off South Carolina.

The Council approved South Carolina's request and requested that NMFS concurrently close the EEZ off South Carolina to the harvest of brown, pink, and white shrimp. NMFS determined that the recommended closure conformed with the procedures and criteria specified in the FMP and the Magnuson-Stevens Act, and, therefore, implemented the closure effective as of March 22, 2011 (76 FR 16698, March 25, 2011).

During the closure, as specified in 50 CFR 622.35(d)(2), no person could: (1) Trawl for brown, pink, or white shrimp in the EEZ off South Carolina; (2) possess on board a fishing vessel brown, pink, or white shrimp in or from the EEZ off South Carolina unless the vessel is in transit through the area and all nets with a mesh size of less than 4 inches (10.2 cm) are stowed below deck; or (3) for a vessel trawling within 25 nautical miles of the baseline from which the territorial sea is measured, use or have on board a trawl net with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut.

The FMP and implementing regulations at 50 CFR 622.35(d) state that: (1) The closure will be effective until the state's requested ending date of the closure in the respective state's waters, but may be ended earlier based on the state's request; and (2) if the state closure is ended earlier, NMFS will terminate the closure of the EEZ by filing a notification to that effect with the Office of the Federal Register. Based on biological sampling and the initial request from the state of South Carolina, the reopening of the EEZ waters off South Carolina would occur no later than June 7, 2011. Therefore, NMFS publishes this notification to reopen the EEZ off South Carolina to the harvest of brown, pink, and white shrimp effective 12:01 a.m., local time, June 7, 2011.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B). Allowing prior notice and opportunity for public comment on the reopening is unnecessary because the rule

establishing the reopening procedures has already been subject to notice and comment, and all that remains is to notify the public of the reopening date. Additionally, allowing for prior notice and opportunity for public comment for this reopening is contrary to the public interest because it requires time, thus delaying the removal of a restriction and thereby reducing socioeconomic benefits to the commercial sector. Also, the FMP procedures and implementing regulations require the commercial penaeid shrimp trawling component to reopen on June 7, 2011.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is authorized by 50 CFR 622.35(d) and is exempt from review under Executive Order 12866.

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

Dated: May 19, 2011.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–12750 Filed 5–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0910051338–0151–02]

RIN 0648–XA429

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Trip Limit Increase for the Common Pool Fishery

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

ACTION: Temporary rule; inseason adjustment of trip limit.

SUMMARY: NMFS increases the trip limit for George's Bank (GB) cod for Northeast (NE) multispecies common pool vessels for the 2011 fishing year (FY), through April 30, 2012. This action is authorized under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and by the regulations implementing Amendment 16 and Framework Adjustment (FW) 44 to the NE Multispecies Fishery Management Plan (FMP). The action is intended to facilitate the harvest of GB cod to allow the total catch of this stock to further approach the common pool sub-annual catch limit (sub-ACL).

DATES: Effective May 19, 2011, through April 30, 2012.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fisheries Management Specialist, (978) 675–2153, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the NE multispecies fishery are found at 50 CFR part 648, subpart F. The regulations at § 648.86(o) authorize the NMFS NE Regional Administrator (RA) to adjust the trip limits for common pool vessels in order to optimize the harvest of NE regulated multispecies by preventing the overharvest or underharvest of the pertinent common pool sub-ACLs. For FY 2011, the common pool sub-ACL for GB cod is 218,528 lb (99 mt). The current trip limit for GB cod is 2,000 lb (907.2 kg) per day-at-sea (DAS), up to 20,000 lb (9,071.8 kg) per trip.

The initial FY 2011 trip limit for GB cod was intended to be 3,000 lb (1,360.8 kg) per DAS, up to 30,000 lb (13,607.8 kg) per trip. However, the final rule implementing FW 45 (79 FR 23042; May 1, 2011) inadvertently implemented a trip limit of 2,000 lb (907.2 kg) per DAS, up to 20,000 lb (9,071.8 kg) per trip. The intended trip limit was developed after considering changes to the FY 2011 common pool sub-ACLs and sector rosters, catch rates of this stock during FY 2010, the implementation of differential DAS counting during FY 2011, public comment on proposed trip limits, and other available information.

As of May 6, 2011, the best available catch information, including Vessel Monitoring System (VMS) reports and dealer reports, indicates that almost none of the GB cod sub-ACL has been harvested. This action increases the GB cod trip limit to 3,000 lb (1,360.8 kg) per DAS, up to 30,000 lb (13,607.8 kg) per trip, for common pool vessels, effective May 19, 2011, through April 30, 2012, to provide additional incentive to harvest this stock and to implement the intended initial trip limit for GB cod. This action does not change the current GB cod trip limit for vessels with a Handgear A permit (300 lb (136.1 kg) per trip), Handgear B permit (75 lb (34.0 kg) per trip), or Small Vessel Category permit (300 lb (136.1 kg) of cod, haddock, and yellowtail flounder combined). Catch will continue to be monitored through dealer-reported landings, VMS catch reports, and other available information, and if necessary, additional adjustments to common pool management measures may be made.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3) to waive prior notice and the opportunity for public comment, as well as delayed effectiveness, for this inseason adjustment because notice, comment, and a delayed effectiveness would be impracticable and contrary to the public interest. The regulations at § 648.86(o) grant the RA authority to adjust the NE multispecies trip limits for common pool vessels in order to prevent the overharvest or underharvest of the pertinent common pool sub-ACLs. This action increases the trip limit for GB cod to implement the intended initial trip limit for FY 2011 and to facilitate the harvest of the common pool sub-ACLs for this stock. The time necessary to provide for prior notice and comment, and delayed effectiveness for this action, would prevent NMFS from implementing the necessary trip limit adjustments in a timely manner. A resulting delay in the liberalization of trip limits would unnecessarily restrain catch rates for GB cod, thereby preventing the total catch of these stocks to further approach the pertinent common pool sub-ACL.

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

Dated: May 19, 2011.

Margo Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–12748 Filed 5–19–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 100
Tuesday, May 24, 2011

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2010–0113]

RIN 0579–AD40

Importation of Fresh Pitaya Fruit From Central America Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation of fresh pitaya fruit from Central America into the continental United States. As a condition of entry, pitaya fruit from Central America would be subject to a systems approach that would include requirements for monitoring and oversight, establishment of pest-free places of production, and procedures for packing the pitaya fruit. This action would allow for the importation of pitaya fruit from Central America into the continental United States while continuing to provide protection against the introduction of plant pests.

DATES: We will consider all comments that we receive on or before July 25, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0113* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0113, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0113.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit, 133, Riverdale, MD 20737–1236; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests within the United States.

The national plant protection organizations (NPPOs) of the countries of Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama have requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow pitaya fruit (*Hylocereus* spp.) to be imported from these countries into the continental United States. This document will refer to these countries collectively as Central America.

As part of our evaluation of this request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Copies of the PRA and the RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov). The PRA, titled "Importation of Fresh Pitaya Fruit, *Hylocereus* spp. and several other genera and species, from Central America into the Continental United States" (October 2009), evaluates the risks associated with the importation of pitaya fruit into the continental United States from Central America. The PRA identified four pests of quarantine significance present in Central America that could be introduced into the United States through the importation of pitaya fruit. These are the Mexican fruit fly or Mexfly (*Anastrepha ludens*), Mediterranean fruit fly or Medfly (*Ceratitis capitata*), the gray pineapple mealybug (*Dysmicoccus neobrevipes*), and the passionvine mealybug (*Planococcus minor*). All four of these pests were determined to pose a high pest risk potential.

APHIS has determined that measures beyond standard port-of-entry inspection are required to mitigate the risks posed by these plant pests. Therefore, we are proposing to allow the importation of pitaya fruit from Central America into the continental United States only if they are produced in accordance with a systems approach to mitigate pest risk as outlined below. We are proposing to add the systems approach to the regulations in a new § 319.56–51 governing the importation of pitaya fruit from Central America.

Proposed Systems Approach

Monitoring and Oversight

Paragraph (a) of proposed § 319.56–51 would set out monitoring and oversight requirements for the NPPOs of the countries exporting pitaya fruit to the United States. Paragraph (a)(1) would require the NPPO of the exporting country to provide a workplan to APHIS that details the activities the NPPO will carry out to meet the requirements of the systems approach, subject to APHIS's approval of the workplan. APHIS would be directly involved with the NPPO in monitoring and auditing implementation of the systems approach. A bilateral workplan is an agreement between APHIS' Plant Protection and Quarantine program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities that specifies in detail the phytosanitary measures that will comply with our regulations governing the import or export of a specific commodity. Bilateral workplans apply only to the signatory parties and establish detailed procedures and guidance for the day-to-day operations of specific import/export

programs. Bilateral workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. The implementation of a systems approach typically requires a bilateral workplan to be developed.

Paragraph (a)(2) would require the NPPO of the exporting country to conduct inspections at the packinghouses and monitor packinghouse operations to verify that the packinghouses comply with the systems approach requirements. The NPPO of the exporting country would also have to visit and inspect the places of production monthly, starting 2 months (60 days) before harvest and continuing until the end of the shipping season, to verify that the growers are complying with the systems approach requirements. If the NPPO finds that a place of production or packinghouse is not complying with the requirements of the systems approach, no fruit from the place of production or packinghouse would be eligible for export to the United States until APHIS and the NPPO conduct an investigation and appropriate remedial actions have been implemented.

Paragraph (a)(3) would require the NPPO of the exporting country to review and maintain all forms and documents related to export program activities in places of production and packinghouses for at least 1 year and, as requested, provide them to APHIS for review.

The monitoring and oversight described above would ensure that the required phytosanitary measures are properly implemented throughout the process of growing and packing pitaya fruit for export to the United States.

Place of Production Requirements

Paragraph (b)(1) of proposed § 319.56–51 would require the personnel conducting the trapping for Mexfly and Medfly described later in this document to be hired, trained, and supervised by the NPPO of the exporting country. The exporting country's NPPO must certify that each place of production has effective fruit fly trapping programs, and follows control guidelines, when necessary, to reduce quarantine pest populations. APHIS would be able to monitor the places of production. This condition would ensure that pitaya fruit intended for export to the continental United States are grown and packed in production and packing areas of Central America where fruit fly traps are maintained and where the other elements of the systems approach described below are in place.

Under proposed paragraph (b)(2), pitaya fruit would have to be grown in approved places of production that are registered with the NPPO of the exporting country.

Paragraph (b)(3) would specify that trees and other structures, other than the crop itself, may not shade the crop during the day and no other host plants of Medfly or Mexfly may be grown within 100 meters of the edge of the production site. During hot, sunny weather, pests congregate in shaded areas for survival. These requirements would reduce the pest pressure of Medfly and Mexfly outside the production site.

Paragraph (b)(4) would require that pitaya fruit that has fallen on the ground be removed from the place of production at least once every 7 days. Although pitaya fruit are a potential host for the identified pests, the pests typically prefer fallen fruit. Therefore, requiring that fallen fruit be removed from the place of production would reduce populations of pests in the fields where pitaya fruit intended for importation into the continental United States are grown. In addition, fallen fruit would not be allowed to be included in field containers of fruit to be packed for export because fruit that has fallen from trees may be damaged and thus more susceptible to infestation.

Under paragraph (b)(5), harvested pitaya fruit would have to be placed in field cartons or containers that are marked to show the place of production. This requirement would ensure that APHIS and the NPPO of the exporting country could identify the place of production for the pitaya fruit if inspectors were to find quarantine pests in the fruit either before export or at the port of entry.

Mitigation Measures for Medfly and Mexfly

APHIS has on rare instances intercepted fruit flies in pitaya fruit. Records of pitaya fruit being a host for either Medfly or Mexfly are either unverified references in old literature or based on cage infestations. As a result, pitaya fruit are considered to be poor hosts to fruit flies. Based on this, we would use trapping to demonstrate that places of production are free of fruit flies in conjunction with a systems approach to mitigate the risk posed by these fruit flies.

Paragraph (c)(1)(i) of proposed § 319.56–51 would specify the trapping requirements to demonstrate place of production freedom from Medfly and Mexfly. Beginning at least 1 year before the start of harvest and continuing through the end of the shipping season, trapping for Mexfly and Medfly would have to be conducted in the places of pitaya fruit production with at least 1 trap per hectare of APHIS-approved traps and traps must be serviced every 7 days.

Under proposed paragraph (c)(1)(ii), we would begin requiring places of production to meet standards for cumulative levels of flies per trap per day starting at 2 months prior to harvest through the end of the shipping season. The interval between the start of trapping and the enforcement of standards for flies per trap per day would allow the NPPO time to establish a baseline for compliance. Beginning 2 months prior to harvest, when traps are serviced, if either Medfly or Mexfly are trapped at a particular place of production at cumulative levels above 0.07 flies per trap per day, pesticide bait treatments would have to be applied in the affected place of production in order for the place of production to remain eligible to export pitaya fruit to the continental United States. If the average Medfly or Mexfly catch is greater than 0.07 flies per trap per day for more than 2 consecutive weeks, the place of production would be ineligible for export until the rate of capture drops to an average of less than 0.07 flies per trap per day.

Paragraph (c)(1)(iii) would state that the NPPO would have to keep records of fruit fly detections for each trap, update the records each time the traps are checked, and make the records available to APHIS inspectors upon request. The records would have to be maintained for at least 1 year.

Paragraph (c)(2) would provide pest-free areas as another option for mitigating the risk associated with Medfly. If pitaya fruit were produced in an area designated by APHIS as free of Medfly in accordance with § 319.56–5, no further mitigation for those fruit flies would be necessary for fruit produced in that area. For instance, Belize conducts a national fruit fly program, including Jackson traps, to maintain its pest-free status for Medfly, and APHIS currently recognizes all of Belize as free of Medfly. We are not proposing to provide for the use of pest-free areas for Mexfly because local conditions in these countries are not likely to allow the establishment of such areas.

Section 319.56–5 sets out specific requirements for determination that an area is a pest-free area. Paragraph (a) of § 319.56–5 states that determinations of pest-free areas be made in accordance with International Standards for Phytosanitary Measures (ISPM) No. 4, which is incorporated by reference in § 300.5. ISPM No. 4 sets out three main

criteria for recognition of a pest-free area:

- Systems to establish freedom;
- Phytosanitary measures to maintain freedom; and
- Checks to verify freedom has been maintained.

Packinghouse Requirements

Paragraph (d) of proposed § 319.56–51 would set out requirements for the packinghouses where the pitaya fruit would be processed. The packinghouse would have to be registered with the NPPO of the exporting country. All openings to the outside of the packinghouse would have to be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents pests from entering. Screening with openings of not more than 1.6 mm excludes fruit flies. The packinghouse would be required to have double doors at the entrance to the facility and at the interior entrance to the area where the pitaya fruit would be packed. Such entrances are designed to exclude fruit flies from the packinghouse. In addition, the packinghouse could only accept fruit from registered places of production while the packinghouse is in use for exporting pitaya fruit to the United States. These procedures would reduce the risk that quarantine pests are present on pitaya fruit exported to the United States.

Post-Harvest Procedures

Paragraph (e) would require that the fruit be safeguarded by a pest-proof screen or plastic tarpaulin while in transit to a pest-exclusionary packinghouse and while awaiting packing. Pitaya fruit would have to be packed within 24 hours of harvest in insect-proof cartons or containers that can be sealed at the packinghouse against the entry of pests, or covered with insect-proof mesh or a plastic tarpaulin for transport to the United States. These safeguards would have to remain intact until arrival in the United States. These measures would prevent harvested fruit from being infested by quarantine pests.

Phytosanitary Inspection

Paragraph (f)(1) would require a biometric sample of pitaya fruit jointly agreed upon by APHIS and the NPPO to be inspected in the exporting country by the NPPO of that country following any post-harvest processing. The biometric sample would be visually inspected for gray pineapple mealybug and passionvine mealybug, which are external pests. A portion of the fruit would also be cut open to detect Mexfly and Medfly, which are internal pests. If the fruit is from a pest-free area for Medfly, then the fruit would only be inspected for Mexfly. External and internal inspection of a sample would ensure that pests at various life stages are detected.

Under proposed paragraph (f)(2), the pitaya fruit would be subject to inspection for all quarantine pests of concern at the port of entry. In addition, shipping documents identifying the place(s) of production in which the fruit had been produced and the packing shed(s) in which the fruit had been processed would have to accompany each lot of fruit presented for inspection at the port of entry to the United States and would have to be maintained until the fruit is released for entry.

Under paragraph (f)(3), if a gray pineapple mealybug and passionvine mealybug were to be found, the entire consignment of fruit would be prohibited from import into the United States unless it were treated in accordance with 7 CFR part 305. If a single larva of either fruit fly were to be found in a shipment (either by the NPPO in the exporting country or by inspectors at the U.S. port of entry), the entire consignment of fruit would be prohibited from export, and the place of production producing that fruit would be suspended from the export program until appropriate measures, as agreed upon by the NPPO of the exporting country and APHIS, had been taken.

Commercial Consignments

Paragraph (g) would state that only commercial consignments of pitaya fruit would be allowed to be imported. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control.

Phytosanitary Certificate

Paragraph (h) sets out the requirement for a phytosanitary certificate. Each consignment of fruit would have to be accompanied by a phytosanitary certificate issued by the NPPO of the exporting country, providing an additional declaration stating that the fruit in the consignment was produced in accordance with the requirements in proposed § 319.56–51. This requirement would certify that the provisions of the regulations have been met.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

This proposed rule would allow the importation of fresh pitaya fruit from Central America into the continental United States. Pitaya fruit is produced in Hawaii, California, and Florida, but the quantities domestically produced, numbers of U.S. producers, quantities imported, and other factors needed to assess the likely economic effects of this rule are not known. The quantity of pitaya fruit that would be imported from Belize, Costa Rica, El Salvador, Guatemala, Honduras, and Panama is also unknown. Nicaragua estimates exporting 1,200 metric tons (60 40-foot containers) of pitaya fruit to the continental U.S. annually, and it is thought that the other countries may ship similar or smaller amounts.

Lack of information about the quantity of pitaya fruit that would be imported from these countries, and about the quantities produced and already imported by the United States, prevents a clear understanding of what the economic effects of the proposed

rule may be. We welcome information that the public may offer regarding the possible economic effects of this rule for U.S. small entities.

Executive Order 12988

This proposed rule would allow pitaya fruit to be imported into the United States from Central America. If this proposed rule is adopted, State and local laws and regulations regarding pitaya fruit imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2010–0113. Please send a copy of your comments to: (1) Docket No. APHIS–2010–0113, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to amend the fruits and vegetables regulations to allow the importation of fresh pitaya fruit from Central America into the continental United States. As condition of entry, pitaya fruit from Central America would be subject to a systems approach that would include requirements for monitoring and oversight, establishment of pest-free places of production, and procedures for packing the pitaya. This action would allow for the importation of pitaya fruit from Central America into the continental United States while continuing to provide protection against the introduction of quarantine pests.

Implementing this rule requires the exporting country's NPPO to certify production sites, provide a workplan, maintain records of fruit fly detections and shipping documents, register packinghouses, and complete a phytosanitary certificate.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.8652 hours per response.

Respondents: Shippers and producers of fresh pitaya, NPPOs of Central America.

Estimated annual number of respondents: 27.

Estimated annual number of responses per respondent: 5.2222.

Estimated annual number of responses: 141.

Estimated total annual burden on respondents: 122 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56–51 is added to read as follows:

§ 319.56–51 Fresh pitaya from certain Central American countries.

Fresh pitaya fruit (*Hylocereus* spp.) may be imported into the United States from Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama in accordance with the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Anastrepha ludens*, *Ceratitis capitata*, *Dysmicoccus neobrevipes*, and *Planococcus minor*.

(a) *Monitoring and oversight.* (1) The national plant protection organization (NPPO) of the exporting country must provide a workplan to APHIS that details the activities that the NPPO will, subject to APHIS's approval, carry out to meet the requirements of this section. APHIS will be directly involved with the NPPO in the monitoring and auditing implementation of the systems approach.

(2) The NPPO of the exporting country must conduct inspections at the packinghouses and monitor packinghouse operations. Starting 2 months before harvest and continuing until the end of the shipping season, the NPPO of the exporting country must visit and inspect the places of production monthly to verify compliance with the requirements of this section. If the NPPO finds that a packinghouse or place of production is not complying with the requirements of this section, no fruit from the place of production or packinghouse will be eligible for export to the United States until APHIS and the NPPO have conducted an investigation and appropriate remedial actions have been implemented.

(3) The NPPO must review and maintain all forms and documents related to export program activities in places of production and packinghouses for at least 1 year and, as requested, provide them to APHIS for review.

(b) *Place of production requirements.* (1) The personnel conducting the trapping required in paragraph (c) of this section must be hired, trained, and supervised by the NPPO of the exporting country. The exporting country's NPPO must certify that each place of production has effective fruit fly trapping programs, and follows control guidelines, when necessary, to reduce quarantine pest populations. APHIS may monitor the places of production.

(2) The places of production producing pitaya for export to the United States must be registered with the NPPO of the exporting country.

(3) Trees and other structures, other than the crop itself, must not shade the crop during the day. No *C. capitata* or *A. ludens* host plants may be grown within 100 meters of the edge of the production site.

(4) Pitaya fruit that has fallen on the ground must be removed from the place of production at least once every 7 days and may not be included in field containers of fruit to be packed for export.

(5) Harvested pitaya fruit must be placed in field cartons or containers that are marked to show the place of production.

(c) *Mitigation measures for C. capitata and A. ludens.* (1) *Pest-free places of production.* (i) Beginning at least 1 year before harvest begins and continuing through the end of the shipping season, trapping for *A. ludens* and *C. capitata* must be conducted in the places of pitaya fruit production with at least 1 trap per hectare of APHIS-approved traps, serviced every 7 days.

(ii) From 2 months prior to harvest through the end of the shipping season, when traps are serviced, if either *A. ludens* or *C. capitata* are trapped at a particular place of production at cumulative levels above 0.07 flies per trap per day, pesticide bait treatments must be applied in the affected place of production in order for the place of production to remain eligible to export pitaya fruit to the continental United States. If the average *A. ludens* or *C. capitata* catch is greater than 0.07 flies per trap per day for more than 2 consecutive weeks, the place of production is ineligible for export until the rate of capture drops to an average of less than 0.07 flies per trap per day.

(iii) The NPPO must maintain records of fruit fly detections for each trap, update the records each time the traps are checked, and make the records available to APHIS upon request. The records must be maintained for at least 1 year for APHIS review.

(2) *Pest-free area for C. capitata.* If the pitaya fruit are produced in a place of production located in an area that is designated as free of *C. capitata* in accordance with § 319.56–5, the trapping in paragraph (c)(1) of this section is not required for *C. capitata.*

(d) *Packinghouse requirements.* (1) The packinghouses must be registered with the NPPO of the exporting country.

(2) All openings to the outside must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents pests from entering the packinghouses.

(3) The packinghouses must have double doors at the entrance to the facilities and at the interior entrance to the area where the pitaya fruit are packed.

(4) While in use for packing pitaya fruit for export to the United States, the packinghouses may only accept pitaya fruit that are from registered places of production and that are produced in accordance with the requirements of this section.

(e) *Post-harvest procedures.* The pitaya fruit must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. Pitaya fruit must be packed in insect-proof cartons or containers that can be sealed at the packinghouse, or covered with insect-proof mesh or a plastic tarpaulin for transport to the United States. These safeguards must be intact upon arrival in the United States.

(f) *Phytosanitary inspection.* (1) The NPPO of the exporting country must visually inspect a biometric sample of pitaya fruit, jointly approved by APHIS and the NPPO of the exporting country, for *D. neobrevipes* and *P. minor,* and cut open a portion of the fruit to detect *A. ludens* and *C. capitata.* If the fruit is from a pest-free area for *C. capitata,* then the fruit will only be inspected for *A. ludens.*

(2) The fruit are subject to inspection at the port of entry for all quarantine pests of concern. Shipping documents identifying the place(s) of production in which the fruit was produced and the packing shed(s) in which the fruit was processed must accompany each lot of fruit presented for inspection at the port of entry to the United States. This identification must be maintained until the fruit is released for entry into the United States.

(3) If *D. neobrevipes* or *P. minor* is found, the entire consignment of fruit will be prohibited from import into the United States unless the shipment is treated with an approved treatment monitored by APHIS. If inspectors (either from the exporting country's NPPO or at the U.S. port of entry) find a single fruit fly larva in a shipment, they will reject the entire consignment for shipment to the United States, and the place of production for that shipment will be suspended from the export program until appropriate measures, agreed upon by the NPPO of the exporting country and APHIS, have been taken.

(g) *Commercial consignments.* The pitaya fruit may be imported in commercial consignments only.

(h) *Phytosanitary certificate.* Each consignment of pitaya fruit must be accompanied by a phytosanitary certificate issued by the NPPO of the exporting country, containing an additional declaration stating that the fruit in the consignment was produced in accordance with requirements in 7 CFR 319.56–51.

Done in Washington, DC, this 18th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–12755 Filed 5–23–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1167]

Proposed Airworthiness Directives Legal Interpretation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Extension of comment period for a proposed airworthiness directives legal interpretation.

SUMMARY: The Federal Aviation Administration published a proposed airworthiness directives legal interpretation for comment. In response to several requests, we are extending the comment period to allow additional time for comment. Comments from the public are requested to assist the agency in developing the final legal interpretation.

DATES: Comments must be received on or before June 30, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–1167 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, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Bring 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.

FOR FURTHER INFORMATION CONTACT: John King, Staff Attorney, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: 202–267–3073.

SUPPLEMENTARY INFORMATION:

Background

On April 14, 2011, the Federal Aviation Administration (FAA) published a proposed airworthiness directives legal interpretation in the **Federal Register** for comment (72 FR 20898). The FAA received numerous comments by the close of the comment period on May 16, 2011. Included in the comments were requests to extend the comment period to allow additional time for comment. The FAA is granting an extension until June 30, 2011, for the public to review the proposed interpretation and provide comments. We are repeating the publication of the proposal for the convenience of the reader.

The Request

The FAA's Organization/Procedures Working Group (WG) of the Airworthiness Directive Implementation Aviation Rulemaking Committee (AD ARC) requested that the FAA provide a legal interpretation of several provisions in 14 Code of Federal Regulations (CFR) that would help resolve a number of issues that have been debated within the WG. These issues partly result from certain changes made in the plain language revision to CFR part 39 in 2002 (see 67 FR 47998, July 22, 2002).

Question 1—Continuing Obligation

Some members of the WG question the extent of an aircraft operator's continuing obligation to maintain an AD-mandated configuration. They ask about two regulations:

§ 39.7 What is the legal effect of failing to comply with an airworthiness directive?

Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section.

§ 39.9 What if I operate an aircraft or use a product that does not meet the requirements of an airworthiness directive?

If the requirements of an airworthiness directive have not been met, you violate § 39.7 each time you operate the aircraft or use the product.

The majority WG opinion is that the language of § 39.7, and its predecessor § 39.3, imposes an operational mandate that the requirements of the AD be maintained for each operation occurring after the actions required by the AD are accomplished. They conclude that § 39.9 expresses the well-established legal position that for continuing operations of products that do not comply with an AD, each flight is a separate violation.

The minority WG opinion is that if the unsafe condition identified in the AD was fixed at a moment in time, then § 39.7 no longer applies. The conclusion of the WG minority was that even if the product was determined to be in a condition contrary to the requirements of the AD at a later time, this change in configuration may be a violation of CFR 43.l3 (b), but not § 39.7.

Proposed Response 1—Continuing Obligation

Section 39.9 notes the need for both initial action by the aircraft operator and continued compliance by that aircraft operator with the AD requirements. Section 39.9 was added to the final rule in 2002 as a result of comments that the proposed version of the rule language combined compliance and non-compliance issues in one heading (proposed § 39.5, final version is § 39.7 of the 2002 rulemaking). The final rule preamble stated that the agency added § 39.9 "to refer to § 39.7, which is the rule that operators will violate if they fail to operate or use a product without complying with an AD that applies to that product."

Section 39.9 explains the continuing obligation for aircraft operators to maintain the AD-mandated configuration. Section 39.7 imposes an operational requirement. Because the AD imposes an enforceable requirement to accomplish the mandated actions, the only way to give § 39.7 any meaning is to recognize that operators are required to maintain the AD-mandated configuration. Once the AD requirements are met an operator may only revert to normal maintenance if that maintenance does not result in changing the AD-mandated configuration.

The objective of part 39 and ADs generally is not just to require accomplishment of particular actions; it is to ensure that, when products are operated, they are free of identified unsafe conditions. Section 39.7 is the regulatory means by which the FAA prevents reintroduction of unsafe conditions. In 1965 the FAA recognized that maintenance may be the cause of some unsafe conditions: "the responsibilities placed on the FAA by the Federal Aviation Act justify broadening the regulation [part 39] to make any unsafe condition, whether resulting from maintenance, design, defect, or otherwise, the proper subject of an AD." (Amendment 39–106; 30 FR 8826, July 14, 1965). Prior to Amendment 39–106 ADs could not be issued unless the unsafe condition was related to a design feature. After Amendment 39–106 ADs could be issued for unsafe conditions however and wherever found. The FAA does not issue ADs as a substitute for enforcing maintenance rules. If a maintenance process is directly related to an unsafe condition, that maintenance action would be proper for an AD. Particularly for unsafe conditions resulting from maintenance, it would be self-defeating to interpret § 39.7 as allowing reversion to the same maintenance practices that caused or contributed to the unsafe condition in the first place.

Question 2—Additional Actions

Some members of the WG questioned the extent of an aircraft operator's obligation to accomplish actions referenced in an AD beyond those actions necessary to resolve the unsafe condition specifically identified in an AD.

The opinion of these WG members is that a reasonable interpretation of the language in § 39.11 directing action to "resolve an unsafe condition" limits the FAA from requiring actions that do "not relate to correcting" the identified unsafe condition. In other words, an AD is limited to those tasks that resolve the unsafe condition, even if other tasks are explicitly listed in the AD or in a referenced service bulletin (SB). Even if § 39.11 doesn't explicitly limit the types of actions that the FAA may mandate in ADs, these members believe that ADs are limited to imposing requirements that are both necessary and "directly related" to addressing an unsafe condition because that is the sole purpose of ADs, as defined in part 39. The belief is that this would allow an operator to comply with those actions that, in the operator's opinion, correct

the unsafe condition without having to obtain an alternative means of compliance (AMOC) for other actions, such as access and close-up procedures, that are "not directly related" to addressing that identified unsafe condition.

Other members of the WG have the opinion that § 39.11 is merely descriptive of the types of actions required by an AD; it neither imposes obligations on the operator nor limits the FAA's authority in issuing an AD. These members believe that, given the FAA's broad regulatory authority, ADs may impose requirements that operators may not consider necessary and "directly related" to resolving the unsafe condition.

Proposed Response 2—Additional Actions

The FAA points to the language contained in § 39.11 that answers the WG's second question.

§ 39.11 What actions do airworthiness directives require?

Airworthiness directives specify inspections you must carry out, conditions and limitations you must comply with, and any actions you must take to resolve an unsafe condition.

First Title 49, United States Code, § 44701, establishes the FAA's broad statutory authority to issue regulations in the interest of aviation safety, and the issuance of an AD is an exercise of this authority. While describing the types of actions required by ADs, § 39.11 does not limit the broad authority established by the statute. The requirements of the AD are imposed by the language of the AD itself, and not by § 39.11. Thus an AD may require more actions than correcting the specific unsafe condition. An example would be an AD requirement for certain continuing maintenance actions to prevent or detect the unsafe condition in the future.

In developing an AD, the FAA exercises its discretion in determining what actions are to be required in the interest of aviation safety. This discretion is limited only by the Administrative Procedure Act's prohibition on rulemaking actions that are "arbitrary and capricious." Provided the actions required by an AD are reasonably related to the purpose of resolving the unsafe condition, it is within the FAA's discretion to mandate them. For example, service information frequently includes instructions for accessing the area to be worked on to address the unsafe condition. Because these access instructions are reasonably related to addressing the unsafe condition, it is within the FAA's discretion to mandate them.

We understand that some members of the AD ARC believe that some ADs are overly prescriptive with respect to mandated actions that they believe are unnecessary to address the unsafe condition. As explained previously, § 39.11 does not address this concern. Rather, the rulemaking process by which individual ADs are adopted provides the public with an opportunity to identify and comment upon these concerns with each AD. In addition, each AD contains a provision allowing for approval of an AMOC, which allows operators to obtain relief from requirements they consider unnecessary or unduly burdensome.

Question 3—Use of the Term "Applicable"

A WG member cited the use of the term "applicable" in a specific AD, AD 2007–07–02 (72 FR 14400, March 28, 2007), which contains these requirements:

(f) Within 60 months after the effective date of this AD: Modify the activation mechanism in the chemical oxygen generator of each passenger service unit (PSU) by doing *all the applicable actions specified in the Accomplishment Instructions of the applicable service bulletin specified in Table 1 of this AD.* [Emphasis added.]

The WG member asked for an explanation of the FAA's use of the word "applicable" in the two instances of its use in the paragraph (f) of the AD.

Proposed Response 3—Use of the Term "Applicable"

"Applicable" has the same meaning in both places in paragraph (f). The second usage references Table 1 in the AD that identifies the model(s) of airplanes to which each service bulletin applies. So the "applicable service bulletin" is the one that applies to each corresponding airplane model, as indicated in the table in the AD. Similarly, "all the applicable actions" specified in each applicable service bulletin are those actions that are identified as applying to a particular airplane. "Applicable" is a necessary qualifier in this context for two reasons: (1) In many ADs, the referenced service bulletins specify different actions for different airplane configurations, typically identified as "Group 1, Group 2," etc. (2) In many ADs, the referenced service bulletins specify different actions depending upon conditions found during accomplishment of previous steps in the instructions, for example, if a crack is smaller than a specified size, repair in accordance with the Structural Repair Manual; if larger, repair in accordance with a method approved by the Aircraft Certification Office. So "applicable" limits the AD's requirements to only those that are specified in the service bulletin for the configuration and conditions of the particular airplane. We intend for the word "applicable" to limit the required actions to those that apply to the particular airplane under the specific conditions found.

The opinion that "applicable" in this context should be interpreted to refer only to those actions in the service bulletin that are necessary to address the unsafe condition, and that operators should not be required to accomplish any other actions that they determine are not necessary, is incorrect. Without the modifier "applicable," the requirement to accomplish "all actions specified in the service bulletin" would literally mandate accomplishing all actions, whether or not applicable to the configuration and condition of a particular airplane. The modifier "applicable" is necessary to avoid this literal, but unintended and likely overly burdensome, meaning.

For example, in AD 2007–07–02 different actions are required depending on the conditions found while accomplishing the modification. The adjective, "applicable," is necessary to limit the required actions to those that are indicated for the conditions found. The purpose of the phrase, "by accomplishing all the applicable actions specified," is to eliminate precisely the ambiguity that would be introduced by the WG members' question. The operator is required to accomplish "all" the actions that are "applicable" to the affected airplane, without allowing discretion to determine which ones are, in the operator's opinion, "necessary" to address the unsafe condition.

Question 4—Impossibility

A member of the AD ARC questions whether an AD needs to specifically address "impossibilities" (for example, an AD requiring an action that is not possible for the specific aircraft to which the AD applies, such as modifying parts that have been removed during an earlier alteration).

Proposed Response 4—Impossibility

The FAA points to the language of §§ 39.15 and 39.17 that answers the fourth question.

§ 39.15 Does an airworthiness directive apply if the product has been changed?

Yes, an airworthiness directive applies to each product identified in the airworthiness directive, even if an individual product has been changed by modifying, altering, or repairing it in the area addressed by the airworthiness directive.

§ 39.17 What must I do if a change in a product affects my ability to accomplish the

actions required in an airworthiness directive?

If a change in a product affects your ability to accomplish the actions required by the airworthiness directive in any way, you must request FAA approval of an alternative method of compliance. Unless you can show the change eliminated the unsafe condition, your request should include the specific actions that you propose to address the unsafe condition. Submit your request in the manner described in § 39.19.

If a change to a product makes it impossible to comply with the requirements of an AD, then the operator must request an AMOC approval.

The FAA does not have the resources to determine the modification status of every product to which the AD may apply. If it is impossible to comply with an AD as written, that does not mean the product does not have the unsafe condition. The only way to make sure the product does not, or that there is another acceptable way to address it, is to require an operator to obtain an AMOC approval.

For several years before part 39 was revised in 2002 the FAA included a Note in every AD that contained the same substance as the regulation. This revision to the regulations was a result of some operators claiming that an AD did not apply to a particular airplane because the airplane's configuration had changed, even though that airplane was specifically identified in the "Applicability" paragraph of the AD. But a change in product configuration does not necessarily mean that the unsafe condition has been eliminated, and in some cases the unsafe condition may actually be aggravated. So it is necessary to emphasize that the "Applicability" paragraph of the AD determines AD applicability, not the configuration of an individual airplane. In the case of the affected component having been removed from the airplane, the operator must obtain an AMOC approval. If the removed component is replaced with a different component that may or may not retain the unsafe condition, this is a technical issue that must be addressed through the AMOC process. There are infinite variations on the "impossibility" issue that cannot be anticipated when drafting an AD but for which the AMOC process is well suited.

Issued in Washington, DC, on May 18, 2011.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 2011–12733 Filed 5–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0475; Directorate Identifier 2010–NM–199–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 757 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. For certain airplanes, this proposed AD would require the installation of new relays adjacent to two of the spoiler control modules that would prevent the deployment of certain spoiler pairs when landing flaps are selected. For certain other airplanes, this proposed AD would require torquing the bracket assembly installation nuts and ground stud nuts, and doing bond resistance tests between the bracket assemblies and the terminal lugs on the ground studs. This proposed AD is prompted by numerous reports of unintended lateral oscillations during the final approach, just before landing. We are proposing this AD to reduce the chance of unintended lateral oscillations near touchdown, which could result in loss of lateral control of the airplane, and consequent airplane damage or injury to flight crew and passengers.

DATES: We must receive comments on this proposed AD by July 8, 2011.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Marie Hogestad, Aerospace Engineer, Flight Controls, ANM–130S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: 425–917–6418; fax: 425–917–6590; e-mail: *marie.hogestad@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0475; Directorate Identifier 2010–NM–199–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received numerous reports of Boeing 757 events where the flight crews experienced unintended lateral oscillations during the final approach, just before landing. One event resulted in a nose gear collapse after a hard landing and another event resulted in a tail strike during a landing that was aborted because of the oscillations. The oscillations are characterized by large

wheel inputs at high rates that are out of phase with the airplane response and typically occur under certain gusty and turbulent wind conditions during landing. Unintended lateral oscillations near touchdown could result in loss of lateral control of the airplane, and consequent airplane damage or injury to flight crew and passengers.

Related Rulemaking

On October 31, 2006, we issued AD 2006–23–15, Amendment 39–14827 (71 FR 66657, November 16, 2006). That AD applies to the Boeing Model 757 airplanes affected by this NPRM. That AD requires installing a control wheel damper assembly at the first officer's drum bracket assembly and aileron quadrant beneath the flight deck floor in section 41, doing a functional test and adjustment of the new installation, and doing related investigative/corrective actions if necessary. For certain airplanes, that AD also requires doing an additional adjustment test of the re-located control wheel position sensor, and an operational test of the flight data recorder and the digital flight data acquisition unit. AD 2006–23–15 also requires installing vortex generators on the leading edge of the outboard main flap on certain airplanes. The addition of a wheel damper prevents large abrupt pilot lateral control wheel inputs and the addition of vortex generators creates vortices over the flap surface to help mitigate a sudden and premature airflow separation when spoilers are deployed in response to large control wheel movements. We issued that AD as interim action to reduce unintended roll oscillations near touchdown, which could result in loss of lateral control of the airplane, and consequent airplane damage or injury to the flight crew and passengers.

The preamble to AD 2006–23–15 specifies that we consider the requirements "interim action" and that the manufacturer is investigating an additional modification that might further reduce or eliminate the unsafe condition. AD 2006–23–15 explains that we might consider further rulemaking if a modification is developed, approved, and available. The manufacturer now has developed such a modification that will further reduce the effects of the unsafe condition, and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination. However, the requirements of AD 2006–23–15 will continue in effect.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 757–27A0152, Revision 1, dated June 30, 2010. This service information identifies two configurations. Configuration 1 includes airplanes that have not accomplished Boeing Alert Service Bulletin 757–27A0152, dated April 29, 2009; and Configuration 2 identifies airplanes on which Boeing Alert Service Bulletin 757–27A0152, dated April 29, 2009, has been accomplished, but need additional work. For Configuration 1 airplanes, this service information describes procedures for changing the E3–1 electronics shelf by installing 3 new bracket assemblies and 3 new relays, changing wire bundle W1265, and changing wire bundle W4471 between the E3–1 electronics shelf and the E5–1 electronics shelf. Additionally, this service information specifies doing an operational test of the spoiler/speedbrake control system. These changes will reduce the lateral control capability by disabling spoiler pairs 1 and 12, and 5 and 8, from responding to control wheel commands when the flaps are deployed in landing configuration (25 and 30 degrees). The speedbrake operation will be unaffected in-air and during on-ground operations. To maintain desired lateral controllability, spoiler pair 1 and 12 will be re-engaged if the right hydraulic system fails.

For Configuration 2 airplanes, this service information describes procedures for torquing the bracket assembly installation nuts and ground stud nuts, and doing bond resistance tests between the bracket assemblies and the terminal lugs on the ground studs.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD will affect 686 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation Group 1, Configuration 1 (55 airplanes).	35 work-hours × $85 per hour = $2,975	$4,691	$7,666	$421,630
Installation Group 2, Configuration 1 (592 airplanes).	32 work-hours × $85 per hour = $2,720	4,610	7,330	4,339,360
Installation Group 3, Configuration 1 (12 airplanes).	32 work-hours × $85 per hour = $2,720	4,619	7,339	88,068
Installation Group 4, Configuration 1 (25 airplanes).	32 work-hours × $85 per hour = $2,720	4,610	7,330	183,250
Installation Group 5, Configuration 1 (2 airplanes).	35 work-hours × $85 per hour = $2,975	4,701	7,676	15,352
Torque Bracket Assembly and Bond Tests, Groups 1–5 Configuration 2.	12 work-hours × $85 per hour = $1,020	0	1,020	699,720

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2011–0475; Directorate Identifier 2010–NM–199–AD.

Comments Due Date

(a) We must receive comments by July 8, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 757–27A0152, Revision 1, dated June 30, 2010.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 27: Flight Control System.

Unsafe Condition

(e) This AD was prompted by numerous reports of unintended lateral oscillations during the final approach, just before landing. We are issuing this AD to reduce the chance of unintended lateral oscillations near touchdown, which could result in loss of lateral control of the airplane, and consequent airplane damage or injury to flight crew and passengers.

Compliance

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

Installation

(g) Within 60 months after the effective date of this AD, do the applicable actions specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) For Configuration 1 airplanes as defined in Boeing Alert Service Bulletin 757–27A0152, Revision 1, dated June 30, 2010, install three bracket assemblies, three new relays, and make changes to the wire bundles, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0152, Revision 1, dated June 30, 2010.

(2) For Configuration 2 airplanes as defined in Boeing Alert Service Bulletin 757–27A0152, Revision 1, dated June 30, 2010, torque the bracket assembly nuts and ground stud nuts, and do bond resistance tests to verify bonding requirements are met, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0152, Revision 1, dated June 30, 2010.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(i) For more information about this AD, contact Marie Hogestad, Aerospace Engineer, Flight Controls, ANM–130S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: 425–917–6418; fax: 425–917–6590; e-mail: *marie.hogestad@faa.gov*.

(j) 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; phone: 206–544–5000, extension 1; fax: 206–766–5680; e-mail: *me.boecom@boeing.com;* Internet: *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, the FAA, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 16, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–12728 Filed 5–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0012; Airspace Docket No. 10–ASO–44]

Amendment of Class D and Class E Airspace; Columbus Lawson AAF, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action would modify Class D and Class E airspace at Lawson Army Airfield (AAF), Columbus, GA, by removing the reference to the Columbus Metropolitan Airport Class C airspace area from the description. Controlled airspace at Columbus Metropolitan Airport is being downgraded due to decreased air traffic volume. This action is necessary for the safety and management of air traffic within the National Airspace System. This action also would update the geographic coordinates of the Columbus Lawson AAF.

DATES: Comments must be received on or before July 8, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–

647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2011–0012; Airspace Docket No. 10–ASO–44, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0012 and Airspace Docket No. 10–ASO–44) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Annotators wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2011–0012; Airspace Docket No. 10–ASO–44." The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

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

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class D airspace and Class E surface airspace at Lawson AAF, Columbus, GA. The volume of air traffic has decreased at Columbus Metropolitan Airport, Columbus, GA, therefore reference to the Class C airspace area is being removed from the description. The geographic coordinates for Lawson AAF also would be adjusted to coincide with the FAAs aeronautical database.

Class D airspace designations and Class E surface airspace designations are published in Paragraphs 5000 and 6002, respectively, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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 proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This proposed 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 proposed regulation is within the scope of that authority as it proposes to amend Class D and E airspace at Lawson AAF, Columbus, GA.

Lists 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 Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO GA D Columbus Lawson AAF, GA [AMENDED]

Columbus Lawson AAF, GA
(Lat. 32°19′55″ N., long. 84°59′14″ W.)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 5.2-mile radius of Lawson Army Airfield. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO GA E2 Columbus Lawson AAF, GA [AMENDED]

Columbus Lawson AAF, GA
(Lat. 32°19′55″ N., long. 84°59′14″ W.)

Within a 5.2-mile radius of Lawson Army Airfield. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in College Park, Georgia, on May 13, 2011.

Barry A. Knight,

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

[FR Doc. 2011–12738 Filed 5–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0005; Airspace Docket No. 10–ASO–42]

Proposed Amendment of Class E Airspace; Lakeland, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Lakeland, FL. The Plant City Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures have been developed for Lakeland Linder Regional Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before July 8, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2011–0005; Airspace Docket No. 10–ASO–42, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0005; Airspace Docket No. 10–ASO–42) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Annotators wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2011–0005; Airspace Docket No. 10–ASO–42." The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

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

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace at Lakeland, FL to provide controlled airspace required to support the new standard instrument approach procedures for Lakeland Linder Regional Airport. The existing Class E airspace extending upward from 700 feet above the surface would be modified for the safety and management of IFR operations.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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 proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This proposed 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 proposed regulation is within the scope of that authority as it would amend Class E airspace at Lakeland Linder Regional Airport, Lakeland, FL.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed 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 Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * *

ASO FL E5 Lakeland, FL [Amended]

Lakeland Linder Regional Airport, FL
(Lat. 27°59′19″ N., long. 82°00′55″ W.)
Bartow Municipal Airport
(Lat. 27°56′36″ N., long. 81°47′00″ W.)
Plant City Municipal Airport
(Lat. 28°00′01″ N., long. 82°09′39″ W.)
Winter Haven's Gilbert Airport
(Lat. 28°03′46″ N., long. 81°45′12″ W.)
Lakeland VORTAC
(Lat. 27°59′10″ N., long. 82°00′50″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Lakeland Linder Regional Airport, and within a 6.7-mile radius of Bartow Municipal Airport, and within a 6.6-mile radius of Plant City Municipal Airport, and within 3.5 miles each side of the 266° bearing from the Plant City Airport extending from the 6.6-mile radius to 7.5 miles west of the Airport, and within a 6.5-mile radius of Winter Haven's Gilbert Airport, and within 2.5 miles each side of the Lakeland VORTAC 071° radial extending from the 7-mile radius to the Winter Haven's Gilbert Airport 6.5-mile radius.

Issued in College Park, Georgia, on May 13, 2011.

Barry A. Knight,

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

[FR Doc. 2011–12734 Filed 5–23–11; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. PA–45; File No. S7–19–11]

Privacy Act of 1974: Implementation and Amendment of Exemptions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended, the Securities and Exchange Commission ("Commission" or "SEC") proposes to exempt portions of three new systems of records from provisions of the Privacy Act to the extent that the records contain investigatory materials compiled for law enforcement purposes. Additionally, the Commission proposes to make technical amendments to its Privacy Act regulation exempting specific systems of records from certain provisions of the Privacy Act. In a companion release published elsewhere in this issue, the Commission is giving concurrent notice of three new systems of records pursuant to the Privacy Act of 1974.

DATES: Comments must be received on or before June 23, 2011.

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–19–11 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. All submissions should refer to File Number S7–19–11. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Cristal Perpignan, Acting Chief Privacy Officer, Office of Information Technology, 202–551–7716.

SUPPLEMENTARY INFORMATION: Pursuant to, and limited by 5 U.S.C. 552a(k)(2), the Commission proposes to exempt systems of records, "Tips, Complaints, and Referrals (TCR) Records (SEC–63)"; "SEC Security in the Workplace Incident Records (SEC–64)"; and "Investor Response Information System (IRIS) (SEC–65)", from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) and 17 CFR 200.303, 200.304, and 200.306, insofar as they contain investigatory materials compiled for law enforcement purposes. The Privacy Act allows Government agencies to exempt certain records from the notification, access and amendment provisions. If an agency claims an exemption, however, it must issue a rule to explain the reasons why a particular exemption is claimed. The proposed exemption would be applicable except under the circumstances set forth in the provisions of section (k)(2) of the Privacy Act.[1]

The TCR Records (SEC–63) system of records contains records related to tips, complaints, referrals of misconduct, or related information about actual or potential violations of the federal securities laws; investor harm; conduct of public companies; securities professionals; regulated entities; and associated persons. This system of records may include investigatory materials that were compiled in connection with the Commission's enforcement responsibilities under the federal securities laws. Such material may consist of unsolicited and often unverified statements concerning individuals, information received from confidential sources, as well as reports

[1] *See* 5 U.S.C. 552a(k)(2).

from the Commission's investigators and other law enforcement personnel. The disclosure of the existence of investigatory materials could seriously undermine effective enforcement of the federal securities laws by prematurely alerting individuals to the fact that they are under investigation, by giving them access to the evidentiary bases for a Commission enforcement action or seriously hampering the Commission's case in court or before an administrative law judge.

The SEC Security in the Workplace Incident Records (SEC–64) system of records contains records related to reports involving incidents of assault, harassment, intimidation, bullying, weapons possession, or threats at the SEC. This system of records may include investigatory materials that were compiled in connection with inquiries or investigation of potential or actual incidents of violence by and against individuals at an SEC facility. The disclosure of information as it relates to investigatory materials or the identity of sources of information may seriously undermine the safety and security of employees in the workplace. Access to such information could allow the subject of an investigation or inquiry of an actual or potential criminal or civil violation to interfere with and impede the investigation, tamper with witnesses or evidence, and to avoid detection or apprehension.

The IRIS (SEC–65) system of records contains records related to complaints/inquiries/requests from members of the public and others. This system of records may include investigatory materials that were compiled in connection with the Commission's enforcement responsibilities under the federal securities laws. Such material may consist of unsolicited and often unverified statements concerning individuals, information received from confidential sources, as well as reports from the Commission's investigators and other law enforcement personnel. The disclosure of the existence of investigatory materials could seriously undermine effective enforcement of the federal securities laws by prematurely alerting individuals to the fact that they are under investigation, by giving them access to the evidentiary bases for a commission enforcement action or seriously hampering the Commission's case in court or before an administrative law judge.

The Commission also proposes to amend its inventory of exempted systems of records by changing the name of the system of records titled: "Office of Personnel Code of Conduct and Employee Performance Files (SEC–38)" to "Disciplinary and Adverse Actions, Employee Conduct, and Labor Relations Files". In a companion release the Commission is publishing a Privacy Act system of records notice to make technical amendments to this system of records to incorporate minor corrective and administrative modifications that have occurred since the notice was last published and will update the system name to more accurately reflect the records contained in the system. The Commission is amending its inventory of exempted systems of records reflect the new title of this system of records.

Finally, the Commission is making a technical amendment to its inventory of exempted systems of records by removing a reference to the system of records titled: "Personnel Security Files". On August 8, 2000 (65 FR 49037), the Commission published notice to delete this system of records as the records were duplicative of records in: "Personnel Investigations Records (OPM/Central-9)", published by the United States Office of Personnel Management.

General Request for Comment

The Commission requests comment on the proposed amendments in this release.

Paperwork Reduction Act

The proposed amendments do not contain a "collection of information" requirement within the meaning of the Paperwork Reduction Act of 1995."[2] Accordingly, the Paperwork Reduction Act is not applicable.

Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits that result from its rules. This proposal would exempt portions of three new systems of records from provisions of the Privacy Act in so far as the records contain investigatory materials compiled for law enforcement purposes. As more fully described above, the TCR Records system of records, the SEC Security in the Workplace Incident Reports system of records and the IRIS system of records may include investigatory materials compiled in connection with the Commission's enforcement of the federal securities laws, in connection with potential or actual incidents of workplace violence, or in connection with public complaints/inquiries/request. Access to or disclosure of the investigatory materials in these systems of records could seriously undermine the effective enforcement of the Federal securities laws, and the safety and security of Commission employees in the workplace. We recognize that our proposed amendments may impose costs on individuals who may wish to obtain access to records that contain investigatory materials in these systems of records. Congress seems to have contemplated these costs in promulgating the exemption in 5 U.S.C. 552a(k)(2).

Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act of 1980[3] ("RFA") requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rule amendments on small entities unless the Commission certifies that the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.[4] Pursuant to 5 U.S.C. 605(b), the Commission hereby certifies that the proposed amendments to 17 CFR 200.312 would not, if adopted, have a significant economic impact on a substantial number of small entities. The proposed amendments would exempt portions of three new systems of records from provisions of the Privacy Act in so far as the records contain investigatory materials compiled for law enforcement purposes. Because the proposed amendments would apply solely to private individuals, the proposed amendments would not, if adopted, have a significant economic impact on a substantial number of "small entities," as defined by the RFA.[5] We encourage written comments regarding this certification.

Statutory Authority

The Commission is proposing amendments to 17 CFR 200.312 under the authority in 5 U.S.C. 552a(k)(2) and 5 U.S.C. 552a(k)(5).

List of Subjects in 17 CFR Part 200

Administrative practice and procedure; Privacy.

Text of Proposed Amendments

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

[2] 44 U.S.C. 3501 *et seq.*

[3] 5 U.S.C. 603(a).

[4] 5 U.S.C. 605(b).

[5] *See* 5 U.S.C. 601(6).

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart H—Regulations Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Commission

1. The authority citation for Part 200 is revised by adding authority for § 200.312 in numerical order to read as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d–1, 78d–2, 78w, 78ll(d), 78mm, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

Section 312 is also issued under 5 U.S.C. 552a(k).

2. Amend § 200.312 by:

a. Removing "and" at the end of paragraph (a)(5);

b. Adding paragraphs (a)(7), (8), and (9); and

c. Revising paragraph (b); and

d. Removing the authority citation at the end of the section.

The revisions read as follows.

§ 200.312 Specific exemptions.

* * * * *

(a) * * *

(7) Tips, Complaints, and Referrals (TCR) Records;

(8) SEC Security in the Workplace Incident Records; and

(9) Investor Response Information System (IRIS).

(b) Pursuant to 5 U.S.C. 552a(k)(5), the system of records containing the Commission's Disciplinary and Adverse Actions, Employee Conduct, and Labor Relations Files shall be exempt from sections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f), and 17 CFR 200.303, 200.304, and 200.306 insofar as they contain investigatory material compiled to determine an individual's suitability, eligibility, and qualifications for federal civilian employment or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

By the Commission.

Dated: May 18, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–12694 Filed 5–23–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 11 and 101

[Docket No. FDA–2011–F–0172]

RIN 0910–AG57

Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of April, 6, 2011 (76 FR 19192). To implement the menu labeling provisions of the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act), FDA proposed requirements for providing certain nutrition information for standard menu items in certain chain restaurants and similar retail food establishments. The document published with several errors in cross references, an incomplete address, and a typographical error in the codified section of the document. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Claudine Kavanaugh, Office of Foods, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, rm. 3234, Silver Spring, MD 20993, 301–796–4647.

SUPPLEMENTARY INFORMATION: In FR Doc. 2011–7940, appearing on page 19192, in the **Federal Register** of Wednesday, April 6, 2011, FDA is making the following corrections:

1. On page 19193, in the second column, in the first full paragraph, in the last sentence, "section III.A of this document" is corrected to read "section III.B of this document".

2. On page 19194, in the second column, in the third full paragraph, in the last sentence, "discussed in section III.C." is corrected to read "discussed in section III.D".

3. On page 19205, in the first column, in the eighth line, "discussed in section III.C." is corrected to read "discussed in section III.D".

4. On page 19205, in the third column, in the twelfth line, "discussed in III.A." is corrected to read "discussed in section III.B".

5. On page 19207, in the first column, in the last paragraph, in the fourth sentence, "discussed in section II.A." is corrected to read "discussed in section III.B".

6. On page 19207, in the second column, in the fifth line, "discussed in section III. A." is corrected to read "discussed in section III.B".

7. On page 19214, in the second column, in the second full paragraph, in the second sentence, "§ 101.11(2)(ii)" is corrected to read "§ 101.11(b)(2)(ii)(A)".

8. On page 19214, in the second column, in the third full paragraph, "§ 101.11(2)(ii)(D)" is corrected to read "§ 101.11(b)(2)(ii)(D)".

9. On page 19216, in the first column, in the second full paragraph in the third sentence, "§ 101.11(b)(2)(i)(4))" is corrected to read "§ 101.11(b)(2)(i)(A)(*4*)".

10. On page 19218, in the second column, in the last paragraph, in the first sentence, "§ 101.11(c)(2)" is corrected to read "§ 101.11(d)(2)" and "§ 101.11(a)(10)" is corrected to read "§ 101.11(a)".

11. On page 19218, in the third column, the first sentence, "FDA is also proposing in § 101.11(c)(2) that an authorized official may register an individual restaurant or similar retail food establishment or multiple restaurants or similar retail food establishments that are part of chain on a single registration form." is corrected to read "Under this proposal an authorized official may register an individual restaurant or similar retail food establishment or multiple restaurants or similar retail food establishments that are part of a chain on a single registration form."

12. On page 19218, in the third column, in the last full paragraph, "FDA, White Oak Building 22, Room 0209, 10903 New Hampshire Ave., Silver Spring, MD 20993" is corrected to read "FDA, CFSAN Menu and Vending Machine Labeling Registration, White Oak Building 22, rm. 0209, 10903 New Hampshire Ave., Silver Spring, MD 20993".

13. On page 19219, in the first column, in the second full paragraph, in the last sentence, "§ 101.11(c)(2)" is corrected to read "§ 101.11(c)(6)".

14. On page 19226, in Table 6, in the seventh column, "42,226,212" is corrected to read "36,962,326".

15. On page 19227, in Table 7, the title "Table 7—ESTIMATED ANNUAL THIRD PARTY DISCLOSURE BURDEN: NUTRIENT DISCLOSURE FOR

PROPOSED § 101.11(B)" is corrected to read "TABLE 7—ESTIMATED ANNUAL THIRD PARTY DISCLOSURE BURDEN: NUTRIENT DISCLOSURE FOR PROPOSED § 101.11(b)".

16. On page 19228, in Table 8, the title "Table 8—ESTIMATED ANNUAL REPORTING BURDEN, VOLUNTARY REGISTRATION UNDER PROPOSED § 101.11(c)(3)" is corrected to read "Table 8—ESTIMATED ANNUAL REPORTING BURDEN, VOLUNTARY REGISTRATION UNDER PROPOSED § 101.11(d)(3)" and at the end of the table, the following table note is added "[1] There are no capital costs or operating and maintenance costs associated with this collection of information."

17. In proposed § 101.11(a), on page 19233, in the second column, in the definition of restaurant-type food, "*Restaurant-type food* means food of the type described in the definition of 'restaurant food' that is ready food human consumption * * *" is corrected to read "*Restaurant-type food* means food of the type described in the definition of 'restaurant food' that is ready for human consumption * * * ".

18. In proposed § 101.11(b)(2)(i)(C), on page 19234, in the second column, "paragraph (b)(3)(i) of this section" is corrected to read "paragraph (b)(2)(ii) of this section".

19. In proposed § 101.11(b)(2)(iii)(A)(*1*) and (b)(2)(iii)(A)(*2*), on page 19235, in the first column, "§ 101.10(b)(2)(ii)(A)" is corrected to read "§ 101.11(b)(2)(iii)(A)".

20. In proposed § 101.11(d)(3)(vii), on page 19236, in the third column, "FDA White Oak Building 22, Room 0209, 10903 New Hampshire Ave., Silver Spring, MD 20993" is corrected to read "FDA, CFSAN Menu and Vending Machine Labeling Registration, White Oak Building 22, rm. 0209, 10903 New Hampshire Ave., Silver Spring, MD 20993".

21. In proposed § 101.11(d)(4), on page 19236, in the third column, "§ 101.11(c)(3)" is corrected to read "§ 101.11(d)(3)".

Dated: May 19, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–12735 Filed 5–23–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 11 and 101

[Docket No. FDA–2011–F–0172]

RIN 0910–AG57

Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period until July 5, 2011, for a proposed rule that was published in the **Federal Register** of April 6, 2011 (76 FR 19192). In that document, FDA proposed requirements for providing nutrition information for standard menu items in certain chain restaurants and similar retail food establishments. The Agency is extending the comment period in response to several requests to give interested parties additional time to comment.

DATES: Submit either electronic or written comments by July 5, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2011–F–0172 and/or RIN 0910–AG57, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name, Docket No. FDA–2011–F–0172, and RIN 0910–AG57 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Geraldine A. June, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 6, 2011 (76 FR 19192), FDA proposed requirements to implement the menu labeling provisions of the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act). Specifically, FDA proposed to require that restaurants and similar retail food establishments that are a part of a chain with 20 or more locations doing business under the same name, and offering for sale the same menu items, provide calorie and other nutrition information for standard menu items, including food on display and self-service food. FDA provided a 60-day comment period (*i.e.,* until June 6, 2011) for that proposal.

FDA has received several requests to extend the comment period. The requests stated that additional time is needed to comment on the proposed rule for a number of reasons, including a need for time to assess the effect of the proposal on the industry; a desire to conduct consumer research to support comments on the proposal; and the complexities of the proposed rule.

FDA has considered the requests and is extending the comment period an additional 30 days, until July 5, 2011. We believe that this additional time will provide interested parties sufficient time to respond to the proposal.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 19, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–12736 Filed 5–23–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–118761–09]

RIN 1545–BI92

Controlled Groups; Deferral of Losses; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to notice of proposed rulemaking (REG–118761–09) that was published in the **Federal Register** on Thursday, April 21, 2011 (76 FR 22336). The proposed regulations provide guidance concerning the time for taking into account deferred losses on the sale or exchange of property between members of a controlled group.

FOR FURTHER INFORMATION CONTACT: Bruce A. Decker at (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this document is under section 267 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–118761–09) contains errors that are misleading and are in need of clarification.

Correction to Publication

Accordingly, the notice of proposed rulemaking which is the subject of FR Doc. 2011–9606 is corrected as follows:

On page 22336, in the preamble, column 1, under the paragraph heading "Background", line 2, the language "concerning the Federal income tax," is corrected to read "concerning the federal income tax".

On page 22337, in the preamble, column 1, under the paragraph heading "Background", line 14 from the top of the page, the language "entirety. Accordingly, the IRS and the" is corrected to read "entirety. Accordingly, the IRS and"

LaNita VanDyke,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2011–12788 Filed 5–23–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2011–0006; Notice No. 119]

RIN 1513–AB81

Proposed Establishment of the Coombsville Viticultural Area (2010R–009P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the 11,075-acre "Coombsville" viticultural area in Napa County, California. The proposed viticultural area lies within the Napa Valley viticultural area and the multicounty North Coast viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to the TTB regulations.

DATES: TTB must receive your comments on or before July 25, 2011.

ADDRESSES: Please send your comments on this notice to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2011–0006 at "Regulations.gov," the Federal e-rulemaking portal);
- *U.S. Mail.* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments TTB receives about this proposal at *http://www.regulations.gov* within Docket No. TTB–2011–0006. A link to that docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 119. You also may view copies of this notice, all related petitions, maps or other supporting materials, and any comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Elisabeth C. Kann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G St., NW., Room 200E, Washington, DC 20220; phone 202–453–2002.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas and lists the approved American viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a

wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations prescribes standards for petitions for the establishment or modification of American viticultural areas. Such petitions must include the following:

- Evidence that the area within the viticultural area boundary is nationally or locally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the viticultural area;
- A narrative description of the features of the viticultural area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make it distinctive and distinguish it from adjacent areas outside the viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the viticultural area, with the boundary of the viticultural area clearly drawn thereon; and
- A detailed narrative description of the viticultural area boundary based on USGS map markings.

Coombsville Petition

TTB received a petition from Thomas Farella of Farella-Park Vineyards and Bradford Kitson, on behalf of the vintners and grape growers in the Coombsville region of Napa Valley, California, proposing the establishment of the Coombsville viticultural area in Napa County, California. The proposed viticultural area contains 11,075 acres, 1,360 acres of which are in 26 commercial vineyards, according to the petition. The proposed viticultural area lies within the Napa Valley viticultural area (27 CFR 9.23) and the larger, multicounty North Coast viticultural area (27 CFR 9.30). The distinguishing features of the proposed Coombsville viticultural area include geology, geography, climate, and soils.

TTB notes that the proposed Coombsville viticultural area adjoins or is located near four established viticultural areas: the Oak Knoll District of Napa Valley viticultural area (27 CFR 9.161) to the northwest and the Los Carneros viticultural area (27 CFR 9.32) to the southwest share portions of their boundary lines with that of the proposed Coombsville viticultural area, and the Wild Horse Valley viticultural area (27 CFR 9.124) to the east and the Solano County Green Valley viticultural area (27 CFR 9.44) to the southeast are close to, but do not touch, the eastern boundary line of the proposed Coombsville viticultural area.

The petition states that four bonded wineries use the "Coombsville" name on one or more of their wine labels: Bighorn Cellars, Laird Family Estate, Farella-Park Vineyards, and Monticello Cellars. All four wineries have advised TTB in writing that if the Coombsville viticultural area is established, they will be able to comply with the rule that, in the case of wine using the "Coombsville" name on the label as an appellation of origin, at least 85 percent of the wine must be produced from grapes grown within the boundary of the Coombsville viticultural area.

Previous Proposed Rulemaking

Previously, a group of Napa Valley grape growers proposed the establishment of the 11,200-acre "Tulocay" American viticultural area in approximately the same area as the proposed Coombsville viticultural area. Consequently, TTB published Notice No. 68 in the **Federal Register** (71 FR 65432) on November 8, 2006, to propose the establishment of the Tulocay viticultural area. However, based on comments received in response to Notice No. 68, TTB published Notice No. 84 in the **Federal Register** (73 FR 34902) on June 19, 2008, withdrawing Notice No. 68 because the evidence and other information available raised a substantial question as to whether there was a sufficient basis to conclude that the geographical area described in the petition was locally or nationally known as "Tulocay" and because consumer confusion could ensue if the term "Tulocay," which for more than 30 years was identified with a particular winery, would suddenly be attributed only to grapes grown from a geographical area.

However, TTB did not preclude consideration of the current petition in Notice No. 84. In fact, TTB stated: "* * * currently there is no petition requesting the establishment of a viticultural area in the subject area using a variation of Tulocay, such as Tulocay District, or any other name, such as Coombsville or Coombsville District. It is noted that these findings do not preclude future consideration of a petition, supported by sufficient name evidence, proposing the establishment of a viticultural area in the subject area using a name other than 'Tulocay.'" Notice No. 84 further noted that some comments in response to Notice No. 68 expressed a preference for the name "Coombsville" for the proposed viticultural area rather than the petitioned-for "Tulocay" name.

TTB further notes that the eastern portion of the boundary line for the proposed Coombsville viticultural area differs from that of the proposed Tulocay viticultural area boundary line in order to keep the proposed Coombsville viticultural area within Napa County and the Napa Valley viticultural area. This boundary change results in a 125-acre reduction of the total area, from 11,200 acres for the previously proposed Tulocay viticultural area to 11,075 acres for the currently proposed Coombsville viticultural area.

Name Evidence for the Proposed Coombsville Viticultural Area

The petition states that "Coombsville" is the commonly used name for an area that lies east of the City of Napa, California. In addition, the area east of the City of Napa is designated as "Coombsville" on the Napa County Land Use Plan 2008–2030 map.

The petition states that, as early as 1914, an unincorporated area of Napa County became commonly known as the "Coombsville" region named for Nathan Coombs, a prominent community leader and founder of the City of Napa. Mr. Coombs owned 2,525 acres of land on 3 parcels to the east of the Napa River, in the area now called "Coombsville" ("Official Map of the County of Napa," California, 1876).

According to the petition, the original Coombsville Road, little more than an unnamed path, existed more than 120 years ago ("Map of Coombsville," survey map, W. A. Pierce, "County Road from Napa to Green Valley," 1883). Currently, Napa city and county road signs identify Coombsville Road where the road intersects with Third Street and the Silverado Trail. Coombsville Road is entirely within the boundary line of the proposed Coombsville viticultural area ("Napa Valley," map, California State Automobile Association, May 2004), according to the petition.

The petition states that the Coombsville region has always had a separate identity from the City of Napa. Early on, the City of Napa grew in increments, eventually "swallowing up

the easterly suburb of Coombsville" ("Napa Valley Heyday," Richard H. Dillon, The Book Club of California, 2004, page 119). The Coombsville region was also recognized as a farming area ("Napa, The Transformation of an American Town," Lauren Coodley and Paula Schmitt, Arcadia Publishing, 2007, page 61), according to the petition.

The Coombsville region has become well known as an agricultural area through Napa County newspaper reports, according to the petition. For example, a newspaper report stated: "A week ago, Patrick Sexton's backyard in Coombsville was a riotous place, with a gobble-gobble here, a gobble-gobble there, a gobble-gobble everywhere" ("Napa High senior raises great gobblers," The Napa Valley Register, Nov. 27, 2008). That report further noted: "Coombsville is still wild country. The birds are fully protected from the raccoons, dogs and occasional mountain lions" (*ibid.*). Another report describes a downed power line that cut off electricity to 2,200 Coombsville residential customers overnight ("Lights out again in Coombsville area," *op. cit.,* Sept. 3, 2008). A third report describes a political district including Coombsville, American Canyon, and part of [the City of] Napa ("Local ballot for June takes shape," *op. cit.,* March 12, 2008), according to the petition.

The petition states that the Napa County real estate industry recognizes the Coombsville region in its sale listings. Properties are described as "situated in the prestigious and desirable Coombsville area," according to a realtor listing on July 7, 2009. A property described as "Coombsville Area at Its Best!" sold for $600,000 in 2008, according to another realtor. The petition includes the following description of a proposed new housing development in the region: "The project is off of Wyatt Road, on the frontier where the residences of east Napa meet the open space and rural feel of Coombsville" ("No middle ground in Napa County," *op. cit.,* Oct. 23, 2005). Fifty-five acres in the region purchased for real estate development is described in the petition as, "* * * in the Coombsville area of Napa County, scrub-covered slopes at the south end of the valley * * *" ("The Far Side of Eden—New Money, Old Land and the Battle for Napa Valley," James Conaway, Houghton Mifflin Company, 2002, page 50).

The petition explains that "Coombsville" has national name recognition because of its renown as a wine region in Napa Valley. The following reports appeared in a wine enthusiast publication: "Putting Coombsville on the map for Napa Cabernet" (July 31, 2001), regarding a vintner who believes he can make one of the top cabernets in the Napa Valley region; "Caldwell Vineyards" (Nov. 15, 2002), regarding the first time that John Caldwell produced wine from a 60-acre Coombsville vineyard; "Franciscan Buys Large Parcel of Napa Land" (March 15, 1999), describing a 160-acre property in the Coombsville region; and "James Laube Unfined—An Armchair Winery 'Tour' with Philippe Melka" (Aug. 10, 2007), detailing the acquisition of Coombsville-grown cabernet grapes to produce wine.

The petition also states that the following reports on the Coombsville region appeared on AppellationAmerica.com: The Coombsville region is described as "the hottest spot for grapes these days in the Napa Valley" and it is circled on a map of the Napa Valley in "Why Cool Coombsville is HOT" (Oct. 8, 2008); and a 1995 acquisition of 20 acres of vineyards in the Coombsville region is detailed in "The Wonders of Mountain Terroir: Let Robert Craig Explain" (Feb. 7, 2007).

Boundary Evidence

The petition states that the history of grape-growing in the Coombsville region dates to 1870, when the Carbone family purchased a large land parcel on Coombsville Road ("Napa Valley Heyday," Richard H. Dillon, The Book Club of California, 2004, page 100). Around 1880, Antonio Carbone opened a winery (*ibid.*). The historic winery still exists and is now used as a private residence, the petition explains. The petition further states that modern vineyard plantings include: Farella-Park Vineyards; Stag's Leap Wine Cellars' Arcadia Vineyards; Far Niente Winery's Barrow Lane, Carpenter, and John's Creek Vineyards; Berlenbach Vineyards; and Richard Perry Vineyards.

An aerial photograph of the Coombsville region, included in the petition, is described as "a view of the 'cup-and-saucer' area of Coombsville, east of the city of Napa" ("The Winemaker's Dance—Exploring Terroir in the Napa Valley," Jonathan Swinchatt and David G. Howell, University of California Press, 2004, page 59, figure 34).

According to USGS maps submitted with the petition, the proposed Coombsville viticultural area is nestled in the southeastern region of the Napa Valley viticultural area, between the eastern shores of both the Napa River and Milliken Creek and the western ridgeline of the Vaca Range at the Solano County line. The west-facing, horseshoe-shaped southern tip of the Vaca Range encircles much of the proposed Coombsville viticultural area and defines parts of the northern, eastern, and southern portions of the boundary line, according to the petition, boundary description, and USGS maps.

According to the boundary description in the petition, the eastern portion of the boundary line of the proposed Coombsville viticultural area incorporates straight lines between western peaks of the Vaca Range. The eastern portion of the boundary line corresponds in part to, but does not overlap, the western portions of the boundary lines of the Wild Horse Valley and Solano County Green Valley viticultural areas and stays within Napa County, according to the boundary description in the petition.

As detailed in the boundary description in the petition, the southern portion of the boundary line of the proposed Coombsville viticultural area follows a straight southeast-to-northwest line from a map point in Kreuse Canyon to Imola Avenue, and then continues west on Imola Avenue to the Napa River.

According to the petition, and as visible on the USGS maps, an east-west transverse ridge that climatically protects the Coombsville region from the full impact of the marine influence of the San Pablo Bay lies beyond the proposed southern portion of the boundary line. Commonly known as "Suscol," "Soscol," or "Soscol Ridge," the ridge separates the Coombsville region from large portions of the Napa Valley flood plain's differing soils and broad slough topography. The petition states that the complex terrain of the ridge was difficult to use as a precise and reasonable southern portion of the boundary line for the proposed Coombsville viticultural area petition. Hence, a straight line between two map points and a portion of Imola Avenue was used to define the southern limits of the proposed Coombsville viticultural area. TTB believes that the straight line and Imola Avenue are a reasonable alternative for the proposed southern portion of the boundary line.

According to the boundary description and the USGS Napa Quadrangle map, the western portion of the boundary line of the proposed Coombsville viticultural area relies on portions of the Napa River and Milliken Creek to connect Imola Avenue to the south with Monticello Road to the north. TTB notes that the southwest corner of the proposed viticultural area, at the intersection of Imola Avenue and the Napa River, touches but does not

overlap the eastern portion of the boundary line of the Los Carneros viticultural area.

According to the boundary description, the northern portion of the boundary line of the proposed Coombsville viticultural area uses Monticello Road and a straight line from the road's intersection with the 400-foot contour line eastward to the peak of Mt. George. Much of the length of the proposed northern portion of the boundary line follows a ridge line from the Vaca Range along Milliken Creek, according to the USGS maps submitted with the petition. TTB notes that the northwest corner of the proposed viticultural area, at the intersection of Milliken Creek and Monticello Road, touches but does not overlap the southeast corner of the Oak Knoll District of Napa Valley viticultural area.

Distinguishing Features

Geology

Citing a report entitled "The Geologic Origin of the Coombsville Area," which is an exhibit to the petition, the petition describes the ancient volcanic and crustal uplift events in the geologic history of the Coombsville region ("The Geologic Origin of the Coombsville Area," EarthVision, Inc., May 2009). According to the petition and the above report, the initial geological event was the eruption and collapse of a volcano that was part of the Napa Valley-Sonoma volcanic series. This process created structural underpinnings for the curved architecture that characterizes the cup-and-saucer topography within the Coombsville region. The eastern part of the Coombsville area is bowl-shaped, reflecting the geologic structure from a caldera landform (*ibid.*), according to the petition.

The petition states that the next important geologic process began when crustal forces started to uplift and wrinkle the earth crust in the Vaca Range. The uplift progressed from east to west through the Vaca Range. The latest expression of the westward advancing crustal compression is the down-dropped region of Napa Valley and the complementary up-thrown Mayacmas Mountains west of Napa Valley (*ibid.*).

According to the above report, when the crustal uplift passed through the Coombsville region, the western front of the collapsed caldera slid westward as a large landslide into the valley below (*ibid.*). The ancient Napa River removed most of the Coombsville landslide debris from the Napa Valley (*ibid.*).

The petition states that the earth surface materials that cover the proposed Coombsville viticultural area originated in a variety of ways. A thin coat of residual debris on volcanic bedrock covers the hills. Within the collapsed volcanic region, alluvial gravels of the Huichica Formation occur in the northern part and diatomaceous lake deposits occur along the northeast edge of the Coombsville bowl landform. The remainder of the surface material is a variety of alluvial deposits laid down since the ancient volcanic collapse (*ibid.*).

The petition did not include data on the geology of the surrounding areas.

Geography

As shown in the aerial photograph submitted with the petition, a horseshoe-shaped, elevated landform, part of the Vaca Range, is the most notable geographical characteristic of the proposed Coombsville viticultural area ("The Winemaker's Dance—Exploring Terroir in the Napa Valley"). The west-facing horseshoe comprises a ring of volcanic mountains, according to the petition.

The petition states that gentle slopes and rolling terrain extend westward from the Vaca Range and the opening of the horseshoe to the Napa River and Milliken Creek, and that most viticultural activity occurs within this area.

As shown in the aerial photograph referred to above, the elevated cup-and-saucer landform lies partially within the curvature of the horseshoe on the western side of the proposed viticultural area. A small flood plain lies along the proposed western portion of the boundary line near the Napa River and Milliken Creek, the petition explains.

The petition states that the Milliken-Sarco-Tulocay watershed, named after the three main creeks in the region, lies within the proposed Coombsville viticultural area. The cup-and-saucer landform presents a drainage obstacle, making Sarco Creek detour to the north and Tulocay Creek flow to the south. Eventually, all drainage flows to the southwest and joins with the south-flowing Napa River, the petition explains.

According to USGS maps, elevations within the proposed Coombsville viticultural area vary from about 10 feet along Milliken Creek and the Napa River shoreline to 1,877 feet at the peak of Mt. George, at the northeast corner of the proposed Coombsville viticultural area along the western ridge of the Vaca Range. The outer landforms vary from approximately 500 to 1,200 feet in elevation, some having steep terrain. The inner landforms exceed 400 feet in elevation in some areas, and the surrounding gentle slopes and rolling terrain to the north, west, and south, between the inner and outer landforms, varies from approximately 100 to 200 feet in elevation. The flood plain along the western boundary line varies in elevation from 10 to 20 feet along Milliken Creek and the Napa River, according to USGS maps.

According to the petition, the combination of unique landforms and large elevation differences gives the proposed Coombsville viticultural area a fog-protected partial basin with high surrounding ridges. The aerial photograph submitted with the petition shows Coombsville as an isolated niche within the larger, more open terrain of the Napa Valley viticultural area. Also, the USGS maps indicate that the Vaca Range to the east provides a natural geographical boundary for the proposed viticultural area.

According to the USGS maps and the petition, the regions surrounding the proposed Coombsville viticultural area have different geographies. To the northwest of the proposed viticultural area lies the Oak Knoll District of Napa Valley viticultural area, which can be distinguished from the proposed Coombsville viticultural area by its low valley floor elevations and the dry creek alluvial fan. To the west lies the City of Napa. To the southwest lies the Los Carneros viticultural area, which can be distinguished from the proposed viticultural area by its low rolling hills, flatlands, and mountainous terrain. To the southeast lies the Solano County Green Valley viticultural area; it can be distinguished from the proposed Coombsville viticultural area by more rugged terrain. To the east lies the Wild Horse Valley viticultural area, which can be distinguished from the proposed viticultural area by its isolated valley and the surrounding steep, rugged terrain and high elevations. To the northeast are the Vaca Mountains, which can be distinguished from the proposed viticultural area by their rugged terrain.

Climate

The petition states that the proposed viticultural area has climatically unique features, including precipitation and heat summation. The petition provides statistical information on the microclimates of the adjacent Los Carneros and Oak Knoll District of Napa Valley viticultural areas, which are both within the larger Napa Valley viticultural area ("The Micro-Climate of the Coombsville Viticultural Area," Erik Moldstad, Sept. 28, 2009). According to the petitioner, the isolated Wild Horse Valley and Solano County Green Valley

viticultural areas, to the immediate east of the proposed Coombsville viticultural area, lack available weather station data. In considering this petition, TTB obtained historic weather station data for surrounding north, east, south, and west regions within 15 miles or less of the proposed Coombsville viticultural area (Lake Berryessa, Fairfield, Napa State Hospital, and the City of Napa, respectively) from the Western Region Climate Center (WRCC) Web site, created in partnership with the National Climatic Data Center, Regional Climate Centers, and State Climate Offices.

The table below presents average annual precipitation amounts and heat summation range totals for the Coombsville region, the Los Carneros and Oak Knoll District of Napa Valley viticultural areas, and the surrounding north, east, south, and west weather station areas. The table data is based primarily on petition documentation and also TTB's WRCC Web site data research.

Climatic averages for Coombsville region and surrounding areas	Coombsville region	Los Carneros viticultural area (southwest)	Oak Knoll District of Napa Valley viticultural area (northwest)	Lake Berryessa (north)	Fairfield (east)	Napa State Hospital (south)	City of Napa (west)
Years	2006–2008	2006–2008	2006–2008	1957–1970	1950–2009	1893–2009	1903–1965
Precipitation in inches—annual average	19.14	17.32	21.63	24.44	22.77	24.61	24.02
Years	1974–2007	1974–2007	1974–2007	1974–2007	1950–2009	1893–2009	1903–1965
Heat summation units—annual average	2,550	2,435	2,888	2,611	2,667	2,794	3,233

The table shows that precipitation in the proposed Coombsville viticultural area averages 19.14 inches annually, and varies significantly from the surrounding viticultural microclimates. The Coombsville region is warmer and wetter than the Los Carneros viticultural area to the southwest and cooler and drier than the Oak Knoll District of Napa Valley viticultural area to the northwest, according to Michael Wolf, owner of Michael Wolf Vineyard Services. To the northwest, the Oak Knoll District of Napa Valley viticultural area averages 2.5 inches more annual rainfall, or 113 percent of the Coombsville regional average. To the southwest, the Los Carneros viticultural area has about 2 inches less rainfall annually, or about 90 percent of the Coombsville regional average. The data in the table indicates that the proposed Coombsville viticultural area averages 3.63 to 5.47 inches less precipitation annually than the four surrounding areas for which weather station data was obtained by TTB.

The growing season in the proposed Coombsville viticultural area is measured in the Winkler climate classification system ("General Viticulture," Albert J. Winkler, University of California Press, 1974, pages 61–64). In the Winkler system, heat accumulation per year defines climatic regions. As a measurement of heat accumulation during the growing season, 1 degree day accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, which is the minimum temperature required for grapevine growth. Climatic region I has less than 2,500 growing degree days (GDD) per year; region II, 2,501 to 3,000; region III, 3,001 to 3,500; region IV, 3,501 to 4,000; and region V, 4,001 or more (*ibid.*).

According to the table, the Coombsville region is a low Winkler region II (2,550 GDD units), which is cooler by 61 to 683 degree units than the four surrounding areas from which weather station data was obtained by TTB. The coolest of the four areas is Lake Berryessa to the north at 2,611 GDD units (region II), and the warmest is the City of Napa to the west at 3,233 GDD units (region III). Also, the adjacent Oak Knoll District of Napa Valley viticultural area is significantly warmer at 2,888 GDD units, a high Winkler region II. The adjacent Los Carneros viticultural area is Winkler region I at 2,435 GDD units.

The petition states that significant viticultural factors for the Coombsville region growing season include the amount of solar radiation and daytime heating. The solar radiation and heating are affected by the dissipation rate of morning fog, followed by the number of hours of sunshine, and then the onset of afternoon cooling bay breezes from San Pablo Bay, the petition explains.

The petition states that the effects of the presence and disappearance of fog from the Napa Valley region in the day alters the temperature rise in the grape-growing season. Temperature and sunlight have subtle effects on grape development that, over the growing season, profoundly affect grape ripening times and flavors. The pace of sugar accumulation and the pace of the lessening of acidity during grape ripening are two examples of how the fog affects grape development. The petition notes that grape growers in the cooler Los Carneros viticultural area, to the south and closer to the foggy bay, harvest grapes with similar sugar and acidity levels for the same varietal as in the Coombsville region, but do so later in the growing season. Also, to the north of the Coombsville region, in the warmer and less foggy Oak Knoll District of Napa Valley viticultural area, the same varietals with similar sugar and acid levels are harvested earlier than in the Coombsville and Los Carneros areas, according to the petition.

The petition explains that the Coombsville region has more solar radiation and daytime heat than the Los Carneros viticultural area to the southwest and less than the Oak Knoll District of Napa Valley viticultural area to the northwest. The morning fog generally dissipates about 1 to 2 hours earlier in the Coombsville region than in the Los Carneros viticultural area to the southwest, and an hour later than in the Oak Knoll District of Napa Valley viticultural area to the northwest. Also, in the afternoon, the bay breezes first cool the Los Carneros viticultural area, then spread slowly northward through the Coombsville region into the Oak Knoll District of Napa Valley viticultural area, and eventually continue northward up the Napa Valley, the petition states.

According to the petition, as the San Pablo Bay afternoon breezes reach northward to each micro-climate in the

Napa Valley region, the air temperature incrementally stops rising, or slightly decreases. Cool breezes create the differences in maximum growing temperatures for the south-to-north locations of the Los Carneros viticultural area, the Coombsville region, Oak Knoll District of Napa Valley viticultural area, and other Napa Valley viticultural areas, the petition explains.

Soils

The petition explains that the soils of the proposed Coombsville viticultural area are generally well drained and of volcanic origin. Upland soils are weathered from their primary volcanic source, while lowland soils are alluvial in nature ("A Custom Soil Resource Report for Napa County, California—Coombsville Soils," Natural Resources Conservation Service, United States Department of Agriculture, *http://websoilsurvey.nrcs.usda.gov/,* May 27, 2009). The petitioner provided the following table, which shows the percentages of the predominant soils in the proposed Coombsville viticultural area as compared to surrounding regions, based on information contained in this report.

Viticultural area	Coombsville	Oak Knoll District of Napa Valley (NW)	Los Carneros (SW)	Wild Horse Valley (E)	West Side Napa River (W)
Predominant soil series	Percent	Percent	Percent	Percent	Percent
Hambright-Rock outcrop	28.5	0.6	0.2	15.5	0
Coombs	24.1	5.6	0	1.7	5.0
Sobrante	15.5	1.1	0	16.0	0
Forward	7.4	0.7	7.9	0	0.4
Haire	4.5	23.0	43.0	0	10.8
Cole	2.6	23.1	10.9	0	47.3

The Hambright-Rock outcrop complex makes up 28.5 percent of the Coombsville area, as shown on the above table and is found in lesser concentrations to the north, east, and south. The complex is found in the Vaca Range and makes up most of the cup-and-saucer landform soils (*ibid.*).

Coombs gravelly and stony loams represent 24.1 percent of the soils in the Coombsville area, and are found in lesser concentrations to the north, east, and west, as shown on the above table. In addition, those soils are the main types appropriate for grape growing in the Coombsville region. They are alluvial, well drained soils at elevations of 50 to 500 feet. The Coombs soils are "relatively unique to the area," and they were likely first identified in the Coombsville area, according to the petition. Coombs soils make up only 1.7 percent of the soils in Napa County, but they account for almost a quarter of the Coombsville region soils (*ibid.*).

As shown on the table, Sobrante soils make up 15.5 percent of the Coombsville region, 16 percent to the east in Wild Horse Valley, and a much lesser concentration to the northwest. These soils are well drained and are at elevations of 120 feet and higher. In addition, some Sobrante soils are used for viticulture in the southeast corner of the proposed Coombsville viticultural area (*ibid.*).

As shown on the table, soils found in lesser concentrations in the proposed Coombsville viticultural area include Haire and Cole, which have higher concentrations in three of the surrounding areas.

The Proposed Coombsville Viticultural Area Compared to the North Coast and Napa Valley Viticultural Areas

North Coast Viticultural Area

The North Coast viticultural area was established by T.D. ATF–145, which was published in the **Federal Register** (48 FR 42973) on September 21, 1983. It includes all or portions of Napa, Sonoma, Mendocino, Solano, Lake, and Marin Counties, California. TTB notes that the North Coast viticultural area contains all or portions of approximately 40 established viticultural areas, in addition to the area covered by the proposed Coombsville viticultural area. In the conclusion of the "Geographical Features" section of the preamble, T.D. ATF–145 states that "[d]ue to the enormous size of the North Coast, variations exist in climatic features such as temperature, rainfall, and fog intrusion."

The proposed Coombsville viticultural area shares the basic viticultural feature of the North Coast viticultural area: the marine influence that moderates growing season temperatures in the area. However, the proposed viticultural area is much more uniform in its geography, geology, climate, and soils than the diverse multicounty North Coast viticultural area. In this regard, TTB notes that T.D. ATF–145 specifically states that "approval of this viticultural area does not preclude approval of additional areas, either wholly contained with the North Coast, or partially overlapping the North Coast," and that "smaller viticultural areas tend to be more uniform in their geographical and climatic characteristics, while very large areas such as the North Coast tend to exhibit generally similar characteristics, in this case the influence of maritime air off of the Pacific Ocean and San Pablo Bay." Thus, the proposal to establish the Coombsville viticultural area is not inconsistent with what was envisaged when the North Coast viticultural area was established.

Napa Valley Viticultural Area

The Napa Valley viticultural area was established by T.D. ATF–79, which was published in the **Federal Register** (46 FR 9061) on January 28, 1981, includes most of Napa County, California. TTB notes that the Napa Valley viticultural area encompasses 14 existing smaller viticultural areas, in addition to the area covered by the proposed Coombsville viticultural area. The Napa Valley viticultural area encompasses "all the areas traditionally known as 'Napa Valley' which possess generally similar viticulture characteristics different from those of the surrounding areas," according to T.D. ATF–79.

The Coombsville petition states that a Mediterranean climate of warm, dry summers and cool, moist winters dominate the Napa Valley region. Air temperatures in the valley increase from south to north based on the dissipation of the marine fog and cooling winds from the San Pablo Bay to the south. Precipitation amounts are greater at the north end of the valley, at higher elevations, and in the Mayacmas Mountains on the west side of the valley. Sun exposure is greater on the east side of Napa Valley along the southwest face of the Vaca Range,

including the Coombsville region, as compared to the western valley foothills of the Mayacmas Mountains, according to the petition.

According to T.D. ATF–79, the Napa Valley viticultural area contains varieties of both Coombs and Sobrante soils, which are prominent in the Coombsville region. It also includes other soil types, including Bale, Cole, Yolo, Reyes, and Clear Lake, T.D. ATF–79 states. The latter soil types are not prominent or are not present in the proposed Coombsville viticultural area, according to the petition. Thus, while the characteristics of the proposed Coombsville viticultural area are generally similar to those of the Napa Valley viticultural area, there are some distinguishing characteristics that may warrant its separate designation as a viticultural area.

TTB Determination

TTB concludes that the petition to establish the 11,075-acre Coombsville American viticultural area merits consideration and public comment, as invited in this notice.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and TTB lists them below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If TTB establishes this proposed viticultural area, its name, "Coombsville," will be recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the new regulation clarifies this point. Consequently, wine bottlers using "Coombsville" in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term of viticultural significance appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other viticulturally significant term that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether the Bureau should establish the proposed viticultural area. TTB also is interested in receiving comments on the sufficiency and accuracy of the name, boundary, climate, soils, and other required information submitted in support of the petition. In addition, given the proposed Coombsville viticultural area's location within the existing Napa Valley and North Coast viticultural areas, TTB is also interested in comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed viticultural area sufficiently differentiates the proposed viticultural area from those existing viticultural areas. TTB is also interested in comments regarding whether the geographic features of the proposed viticultural area are so distinguishable from the surrounding Napa Valley and North Coast viticultural areas that the proposed Coombsville viticultural area should no longer be part of those viticultural areas. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Coombsville viticultural area on wine labels that include the words "Coombsville," as discussed above under "Impact on Current Wine Labels," TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. As noted above, four bottling wineries that currently use the "Coombsville" name on one or more of their wine labels have provided written assurance to TTB that, should the Coombsville viticultural area be approved, these label holders will comply with the regulatory requirement that at least 85 percent of any wine with "Coombsville" on the label is derived from grapes grown within the Coombsville viticultural area.

If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example by adopting a modified or different name for the viticultural area.

Submitting Comments

You may submit comments on this notice by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this notice within Docket No. TTB–2011–0006 on "Regulations.gov," the Federal e-rulemaking portal, at *http://www.regulations.gov*. A direct link to that docket is available under Notice No. 119 on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml*. Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on "User Guide" under "How to Use this Site."
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 119 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via

Regulations.gov, please enter the entity's name in the "Organization" blank of the online comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and you may view, copies of this notice, selected supporting materials, and any electronic or mailed comments TTB receives about this proposal. A direct link to the Regulations.gov docket containing this notice and the posted comments received on it is available on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 119. You may also reach the docket containing this notice and the posted comments received on it through the Regulations.gov search page at *http://www.regulations.gov*.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You also may view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact TTB's information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

The Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Subpart C is amended by adding § 9.____ to read as follows:

§ 9 Coombsville.

(a) *Name.* The name of the viticultural area described in this section is "Coombsville". For purposes of part 4 of this chapter, "Coombsville" is a term of viticultural significance.

(b) *Approved maps.* The two United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Coombsville viticultural area are titled:

(1) Mt. George Quadrangle, California, 1951, Photoinspected 1973; and

(2) Napa Quadrangle, California-Napa Co., 1951, Photorevised 1980.

(c) *Boundary.* The Coombsville viticultural area is located in Napa County, California. The boundary of the Coombsville viticultural area is as described below:

(1) The beginning point is on the Mt. George map at the 1,877-foot peak of Mt. George, section 29, T6N/R3W. From the beginning point, proceed southeast in a straight line for 0.4 mile to the intersection of the 1,400-foot elevation line and an unnamed intermittent creek that feeds northeast into Leonia Lakes, section 29, T6N/R3W; then

(2) Proceed east-southeast in a straight line for 0.45 mile to the intersection of the 1,380-foot elevation line and an unnamed, unimproved dirt road and then continue in the same straight line to the section 29 east boundary line, T6N/R3W; then

(3) Proceed south-southeast in a straight line for 0.6 mile to the unnamed 1,804-foot elevation point in the northwest quadrant of section 33, T6N/R3W; then

(4) Proceed south-southwest in a straight line for 1 mile, passing over the marked 1,775-foot elevation point, to the intersection of the T6N and T5N common line and the 1,600-foot elevation line; then

(5) Proceed south-southeast in a straight line for 1.1 miles to the 1,480-foot elevation point along the section 9 north boundary line, T5N/R3W; then

(6) Proceed south-southwest in a straight line for 1.3 miles to the 1,351-foot elevation point, section 16, T5N/R3W; then

(7) Proceed south-southwest in a straight line for 1.5 miles to the line's intersection with two unimproved dirt roads and the 1,360-foot elevation line in Kreuse Canyon at the headwaters of the intermittent Kreuse Creek, northeast of Sugarloaf, section 20, T5N/R3W; then

(8) Proceed northwest in a straight line for 1.95 miles to the 90-degree turn of Imola Avenue at the 136-foot elevation point, section 13, T5N/R4W; then

(9) Proceed west along Imola Avenue for 2.1 miles, crossing from the Mt. George map onto the Napa map, to Imola Avenue's intersection with the Napa River at the Maxwell Bridge, T5N/R4W; then

(10) Proceed north (upstream) along the Napa River for 3.2 miles, crossing over the T6N/T5N common line, to the Napa River's intersection with Milliken Creek, T6N/R4W; then

(11) Proceed north (upstream) along Milliken Creek for 0.75 mile to Milliken Creek's intersection with Monticello Road, T6N/R4W; then

(12) Proceed northwest along Monticello Road for 2.4 miles, crossing from the Napa map onto the Mt. George map, to Monticello Road's intersection with the section 19 west boundary line, T6N/R3W; and then

(13) Proceed east-southeast in a straight line for 1.4 miles to the beginning point.

Signed: May 10, 2011.

John J. Manfreda,

Administrator.

[FR Doc. 2011–12822 Filed 5–23–11; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2011–0005; Notice No. 118]

RIN 1513–AB80

Proposed Establishment of the Naches Heights Viticultural Area (2009R–107P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the 13,254-acre "Naches Heights" American viticultural area in Yakima County, Washington. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to the Bureau's regulations.

DATES: TTB must receive written comments on or before July 25, 2011.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2011–0005 at "Regulations.gov," the Federal e-rulemaking portal);
- *U.S. mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- *Hand Delivery/Courier:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments TTB receives about this proposal at *http://www.regulations.gov* within Docket No. TTB–2011–0005. A direct link to this docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 118. You also may view copies of this notice, all related petitions, maps or other supporting materials, and any comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Elisabeth C. Kann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202–453–2002.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas and lists the approved American viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations prescribes standards for petitions for the establishment or modification of American viticultural areas. Such petitions must include the following:

- Evidence that the area within the viticultural area boundary is nationally or locally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the viticultural area;
- A narrative description of the features of the viticultural area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make it distinctive and distinguish it from adjacent areas outside the viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the viticultural area, with the boundary of the viticultural area clearly drawn thereon; and
- A detailed narrative description of the viticultural area boundary based on USGS map markings.

Petition for the Naches Heights Viticultural Area

TTB received a petition from R. Paul Beveridge, owner of Wilridge Winery and Vineyard, to establish the "Naches Heights" American viticultural area in the State of Washington. The proposed Naches Heights viticultural area is located entirely within the larger Columbia Valley viticultural area (27 CFR 9.74) of Washington and Oregon. The city of Yakima lies to the southeast of the proposed viticultural area in a valley at lower elevations.

According to the petition, the proposed Naches Heights viticultural area encompasses 13,254 acres and contains 105 acres of commercial vineyards either producing or expecting to produce wine grapes in the foreseeable future. Recent plantings include 74 acres in 2009 and 15 acres in 2010, according to the petition, in addition to an earlier 16 acres of wine grape producing vines.

Name Evidence

The "Naches Heights" name applies to an elevated plateau area in Yakima County, Washington, according to the petition and USGS maps. The USGS topographical maps of Naches, Selah, Yakima West, and Wiley City are used in the written boundary description in the petition to define the boundary of the proposed viticultural area. The area between the Naches River and Cowiche Creek is identified as "Naches Heights"

on the USGS maps as well as on a public lands map (Yakima Public Lands Quadrangle map, 2001, Washington State Department of Natural Resources), according to the petition.

TTB notes that a search of the USGS Geographical Names Information System (GNIS) describes Naches Heights as a summit in Yakima County, Washington. Also, a general internet search for "Naches Heights" produced many hits relating to the geographical region in which the proposed viticultural area falls.

The petition provided evidence of local usage of the name "Naches Heights," including listings for the "Naches Heights Community Center" and the "Little Store on Naches Heights" in The DexOnline.com, Qwest, 2008 Yakima Valley telephone directory. The petition also included multiple articles from the Yakima Herald-Republic referring to "Naches Heights," including an October 22, 2008, obituary of Albert Robert Couchman, who had worked in orchards in Naches Heights; an October 24, 2008, article about a cross-country competition entitled "Local Report: GNAC's best heading to Naches Heights"; and an October 26, 2008, article entitled "Naches Heights: Senior Marcie Mullen turned in Central Washington University's top performance in Saturday's GNAC cross country championship * * *." In addition, the petition included a 1990 Cowiche Canyon brochure issued by the Bureau of Land Management's Spokane District that contained a drawing showing the Naches Heights geographical area, with Cowiche Canyon to the immediate west at lower elevations.

Boundary Evidence

According to USGS maps submitted with the petition, the Naches Heights plateau landform is surrounded by lower elevation valleys and the lower Tieton River to the west, the Naches River to the north and east, and Cowiche Creek to the south and west. The man-made Congdon (Schuler) Canal is located along a portion of the proposed eastern boundary line, closely following the 1,300-foot elevation line. TTB notes that these landforms are distinguishable on both the aerial photographs and the USGS maps submitted with the petition.

Comparison of the Proposed Naches Heights Viticultural Area to the Existing Columbia Valley Viticultural Area

The Columbia Valley viticultural area was established by T.D. ATF–190, published in the **Federal Register** (49 FR 44895) on November 13, 1984. It was described as a large, treeless basin surrounding the Yakima, Snake, and Columbia Rivers in portions of Washington and Oregon. The topography of the Columbia Valley viticultural area was described as a rolling terrain, cut by rivers and broken by long, sloping, basaltic, east-west uplifts. In addition, T.D. ATF–190 stated that the Columbia Valley viticultural area is dominated by major rivers and has a long, dry growing season. The Naches Heights petition notes that the ancient Missoula Floods carved much of the basin geography within the Columbia Valley AVA.

The proposed Naches Heights viticultural area is 0.001 percent the size of the 11.6 million-acre Columbia Valley viticultural area, within which it is situated. It is a single, elevated Tieton andesite plateau landform that ends in andesite cliffs that descend into the valleys surrounding the plateau. Although this landform is part of the Columbia Valley viticultural area, with which it generally shares a similar climate, it is geographically and geologically distinguishable from the surrounding portions of the Columbia Valley viticultural area, according to the petition. The relatively flat terrain of the plateau gently increases in elevation over the 11 miles from southeast to northwest, as shown on the USGS maps, and the entire plateau is elevated over the surrounding valleys. Unlike the rest of the Columbia Valley, no major rivers cross the plateau landscape, although it contains several intermittent streams and small ponds.

Distinguishing Features

The petition states that geology, geography, and soils distinguish the proposed viticultural area from the surrounding areas.

Geology

The petition states that approximately one million years ago, the termination of andesite flow from the Cascade Mountains down the valley of the Tieton River formed the Naches Heights plateau. The proposed Naches Heights viticultural area is located on, and encompasses, a geological formation of Tieton andesite, a volcanic rock.

According to the petition, in contrast to the Naches Heights plateau, there are alluvial deposits, including those that are terraced and older, to the north, east, and south of the proposed viticultural area. To the west of the area are alluvial deposits and Grande Ronde Basalt, Ringold Formation gravels, the Ellensburg Formation, and the Cascade Mountains.

Geography

The petition states that the proposed Naches Heights viticultural area is a plateau that terminates in cliffs of andesite to the north, east, and south. The andesite cliffs distinguish the proposed viticultural area from the Naches River Valley, the Cowiche Creek Valley, and the nearby Yakima River Valley. The USGS maps show that the Naches Heights plateau is elevated in comparison to the surrounding river and creek valleys. Aerial photos submitted with the petition also show the Naches Heights plateau landform and the cliffs that surround it in contrast with the surrounding lower elevation valleys.

On the far west side of the proposed viticultural area, the andesite cliffs are subsumed by the foothills of the Cascade Mountains, according to the petition and the USGS maps. Although not distinguished by steep cliffs, the proposed western boundary line marks the end of andesite rocks and the beginning of the Cascade Mountains foothills, as shown in an aerial photo submitted with the petition. Elevations gradually rise heading west and northwest of the Naches Heights into the Cascade Mountains and the 3,578-foot Bethel Ridge. The high mountainous elevations to the west create a rain shadow effect that protects the Naches Heights plateau from Pacific winter storms.

Elevations on the Naches Heights and along the Tieton andesite cliffs also distinguish the plateau from the surrounding regions, according to the petition. As explained in the petition, cold air drains off the plateau and into the surrounding valleys, thereby reducing potential frost damage and winterkill to vineyards on the Naches Heights. The lowest elevations of the proposed viticultural area are approximately 1,200 feet, which is at the tip of the andesite flow at the far eastern edge of the proposed viticultural area. From this point, the cliffs rise to 1,400 feet, according to the USGS maps. The highest elevation of the plateau, located near the far western end of the proposed viticultural area, is approximately 2,100 feet, at which point the cliffs drop immediately to 1,600 feet. The Yakima City Hall lies to the southeast of the proposed viticultural area at 1,061 feet, a significantly lower elevation than that of the Naches Heights.

Soils

After the volcanic flow of andesite cooled and hardened to form the Naches Heights plateau, pockets of loess, or wind-blown soil, were deposited on the

plateau, according to the petition. After a period of about 1 million years marked by winds and volcanic eruptions in the Cascades, deep beds of unique soils formed in the loess pockets on the plateau. The predominant soils on the plateau are Tieton loam and Ritzville silt loam (U.S. Department of Agriculture, National Resource Conservation Service, Web Soil Survey at *http://websoilsurvey.nrcs.usda.gov/*). According to the petition, the only major difference between Tieton loam and Ritzville silt loam is that the latter formed in deeper pockets of loess, thus creating a very consistent soil type throughout the proposed viticultural area.

The Naches Heights plateau landform, according to the NRCS web soil survey, has generally deep loess soils with adequate drainage and deep rooting depths conducive to successful viticulture. Further, the grape vine roots are not prone to freezing, or winterkill, in the deep plateau soils.

Unlike the plateau, much of the greater Columbia Valley region that surrounds the Naches Heights was covered by alluvial material deposited by the ancient Missoula Floods, according to the petition. Hence, the proposed viticultural area is surrounded mainly by gravelly alluvial soils readily distinguishable from the Tieton loam and Ritzville silt loam of Naches Heights. Harwood loam, a transitional soil formed in both loess and alluvium, is located in small areas of the southern portion of the Naches Heights that is outside the boundary line of the proposed viticultural area.

Rocks, cobbles, and shallow rooting depths are characteristics of the lower elevation valley region that surrounds the Naches Heights plateau, according to the NRCS data. In the valley region, the cold air from the surrounding mountain elevations drains onto the valley floor and ponds to create stagnant, cold air environments that make vine growth difficult during some seasons, the petition explains. Unlike the Naches Heights soils, the valley and floodplain soils, including the Weirman, Wenas, and Kittitas series, are subject to seasonal flooding and a water table close to the surface of the soil, according to NRCS data. In addition, the valley vines have shallow rooting depths that can reach the water table and be frozen during extreme cold weather. Further, seasonal flooding can affect some portions of the surrounding valley area.

TTB Determination

TTB concludes that the petition to establish the 13,254-acre "Naches Heights" American viticultural area merits consideration and public comment as invited in this notice.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and TTB lists them below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If TTB establishes this proposed viticultural area, its name, "Naches Heights," will be recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using "Naches Heights" in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

On the other hand, TTB does not believe that any single part of the proposed viticultural area name standing alone, such as "Naches," would have viticultural significance if the new area is established. Accordingly, the proposed part 9 regulatory text set forth in this document specifies only the full "Naches Heights" name as a term of viticultural significance for purposes of part 4 of the TTB regulations.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term of viticultural significance appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a previously approved label uses the name "Naches Heights" for a wine that does not meet the 85 percent standard, the previously approved label will be subject to revocation upon the effective date of the approval of the Naches Heights viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether the Bureau should establish the proposed Naches Heights viticultural area. TTB is interested in receiving comments on the sufficiency and accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. TTB is also interested in any comments on whether the evidence regarding name and distinguishing features is sufficient to warrant the establishment of this new viticultural area within the existing Columbia Valley viticultural area. In addition, TTB is interested in comments regarding whether the geographical features of the proposed viticultural area are so distinguishable from the surrounding Columbia Valley viticultural area that the proposed Naches Heights viticultural area should no longer be part of the Columbia Valley viticultural area. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Naches Heights viticultural area on wine labels that include the words "Naches Heights" as discussed above under "Impact on Current Wine Labels," TTB is also particularly interested in comments regarding whether there will be a conflict between the proposed viticulturally significant term and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example by adopting a modified or different name for the viticultural area.

Submitting Comments

You may submit comments on this notice by using one of the following three methods:

• *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this notice in Docket No. TTB–2011–0005 on "Regulations.gov," the Federal e-rulemaking portal, at *http://www.regulations.gov*. A direct link to that docket is available under Notice No. 118 on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml*. Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on "User Guide" under "How to Use this Site."

• *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

• *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 118 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via *http://www.regulations.gov,* please enter the entity's name in the "Organization" blank of the comment form. If you comment via mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and you may view, copies of this notice, selected supporting materials, and any electronic or mailed comments TTB receives about this proposal. A direct link to the Regulations.gov docket containing this notice and the posted comments received on it is available on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 118. You may also reach the docket containing this notice and the posted comments received on it through the Regulations.gov search page at *http://www.regulations.gov*.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that TTB considers unsuitable for posting.

You also may view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact TTB's information specialist at the above address or by telephone at 202–443–2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

2. Subpart C is amended by adding § 9.____ to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.____ Naches Heights.

(a) *Name.* The name of the viticultural area described in this section is "Naches Heights". For purposes of part 4 of this chapter, "Naches Heights" is a term of viticultural significance.

(b) *Approved maps.* The five United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Naches Heights viticultural area are titled:

(1) Selah, Wash., 1958, photorevised 1985;

(2) Yakima West, Wash., 1958, photorevised 1985;

(3) Wiley City, Wash., 1958, photorevised 1985;

(4) Naches, Wash., 1958, photorevised 1978; and

(5) Tieton, Wash., 1971, photoinspected 1981.

(c) *Boundary.* The Naches Heights viticultural area is located in Yakima County, Washington. The boundary of the Naches Heights viticultural area is as described below:

(1) The beginning point is on the Selah map at the intersection of the Burlington Northern single-track rail line and the Congdon (Schuler) Canal, section 9, T13N/R18E. From the beginning point, proceed south-southwesterly along the single rail line, onto the Yakima West map, 0.35 mile to the rail line's first intersection with an unnamed creek, locally known as Cowiche Creek, section 9, T13N/R18E; then

(2) Proceed upstream (westerly) along Cowiche Creek, onto the Wiley City map and then onto the Naches map, approximately 6.25 miles to the confluence of the North and South Forks of Cowiche Creek, south of Mahoney Road, section 3, T13N/R17E; then

(3) Proceed upstream (northwesterly) along the North Fork of Cowiche Creek approximately 1.6 miles to the North Fork's intersection with Livengood Road, section 34, T14N/R17E; then

(4) Proceed north and northwest on Livengood Road until it turns west and joins Forney Road, and continue 2.1 miles along Forney Road to the road's intersection with the North Fork of

Cowiche Creek, section 28 northwest corner, T14N/R17E; then

(5) Proceed upstream (northwesterly) along the North Fork of Cowiche Creek approximately 1.8 miles to the North Fork's intersection with the section 17 west boundary line, T14N/R17E; then

(6) Proceed straight north along the section 17 west boundary line to its intersection with Cox Road and then continue north along Cox Road to its intersection with Rosenkranz Road, section 17 northwest corner, T14N/R17E; then

(7) Proceed west on Rosenkranz Road, onto the Tieton map, 0.6 mile to the road's intersection with North Tieton Road, section 7 south boundary line, T14N/R17E; then

(8) Proceed north on North Tieton Road 0.5 mile to the road's intersection with Dilley Road, section 7, T14N/R17E; then

(9) Proceed west on Dilley Road 0.5 mile to the road's intersection with Franklin Road, section 7 west boundary line and the R16E and R17E common line, T14N; then

(10) Proceed north on Franklin Road 0.8 mile to the road's intersection with Schenk Road and the section 6 west boundary line, T14N/R16E; then

(11) Proceed west on Schenk Road 0.55 mile to the road's intersection with Section 1 Road, section 1, T14N/R16E; then

(12) Proceed straight north from the intersection of Schenk Road and Section 1 Road 2.2 miles to the 1,600-foot elevation line, section 36, T15N/R16E; then

(13) Proceed easterly and then southeasterly along the 1,600-foot elevation line, onto the Naches map, approximately 7.5 miles to the 1,600-foot elevation line's intersection with the section 26 north boundary line, T14N/R17E; then

(14) Proceed straight east along the section 26 north boundary line 0.25 mile to the section 26 north boundary line's intersection with the 1,400-foot elevation line, T14N/R17E; then

(15) Proceed southeasterly along the 1,400-foot elevation line approximately 2.5 miles to 1,400-foot elevation line's intersection with Young Grade Road, section 31, T14N/R18E; then

(16) Proceed east in a straight line 0.15 mile to the Congdon (Schuler) Canal, which closely parallels the 1,300-foot elevation line, section 31, T14N/R18E; and then

(17) Proceed southeasterly along the Congdon (Schuler) Canal, onto the Selah map, approximately 3.25 miles, returning to the point of beginning, section 9, T13N/R18E.

Signed: April 29, 2011.

John J. Manfreda,

Administrator.

[FR Doc. 2011–12820 Filed 5–23–11; 8:45 am]

BILLING CODE 4810–31–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2205

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Occupational Safety and Health Review Commission

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Review Commission ("OSHRC") is proposing revisions to part 2205, which it promulgated to implement section 504 of the Rehabilitation Act of 1973, as amended. These proposed revisions account for statutory and regulatory changes, and incorporate procedures for filing complaints under section 508 of the Rehabilitation Act of 1973, as amended. OSHRC is also proposing various corrections and technical amendments to this part.

DATES: Comments must be received by OSHRC on or before June 23, 2011.

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

- *E-mail: regsdocket@oshrc.gov.* Include "PROPOSED RULEMAKING, PART 2205" in the subject line of the message.
- *Fax:* (202) 606–5417.
- *Mail:* One Lafayette Centre, 1120 20th Street, NW., Ninth Floor, Washington, DC 20036–3457.
- *Hand Delivery/Courier:* same as mailing address.

Instructions: All submissions must include your name, return address and e-mail address, if applicable. Please clearly label submissions as "PROPOSED RULEMAKING, PART 2205." If you submit comments by e-mail, you will receive an automatic confirmation e-mail from the system indicating that we have received your submission. If, in response to your comment submitted via e-mail, you do not receive a confirmation e-mail within five working days, contact us directly at (202) 606–5410.

FOR FURTHER INFORMATION CONTACT: Ron Bailey, Attorney-Advisor, Office of the General Counsel, by telephone at (202) 606–5410, by e-mail at *rbailey@oshrc.gov,* or by mail at: 1120 20th Street, NW., Ninth Floor, Washington, DC 20036–3457.

SUPPLEMENTARY INFORMATION:

I. Background

Section 508 of the Rehabilitation Act requires federal agencies that develop, procure, maintain, or use electronic and information technology to "ensure, unless undue burden would be imposed on the department or agency," that this technology allows (1) federal employees who are individuals with disabilities "to have access to and use of information and data that is comparable to the access to and use of the information and data by Federal employees who are not individuals with disabilities," and (2) members of the public who are individuals with disabilities and are "seeking information or services from a Federal department or agency to have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities." 29 U.S.C. 794d(a)(1)(A). In the event that this requirement imposes an undue burden, federal agencies must provide the relevant information and data using an "alternative means." 29 U.S.C. 794(a)(1)(B). An administrative complaint filed for an alleged violation of section 508 of the Rehabilitation Act must be filed with the agency "alleged to be in noncompliance," and must be processed by the agency using "the complaint procedures established to implement" section 504 of the Rehabilitation Act. 29 U.S.C. 794d(f)(2). Therefore, OSHRC is proposing to amend its procedures in part 2205, which effectuates section 504, to also incorporate the requirements set forth in section 508.

Exercising its statutory authority under section 508 of the Rehabilitation Act, 29 U.S.C. 794(a)(2), the Architectural and Transportation Barriers Compliance Board ("Access Board") has issued standards for electronic and information technology, 36 CFR part 1194. These standards define electronic and information technology for purposes of section 508 and provide the technical and functional performance criteria necessary to implement the accessibility requirements specified above. As detailed below, in amending part 2205, OSHRC relies on the definitions and requirements set forth in the Access Board's standards.

Turning to the specific amendments, OSHRC proposes adding a sentence to § 2205.101 ("Purpose") indicating that part 2205 effectuates section 508 and summarizing the purpose of that

section. OSHRC also proposes adding a clause to § 2205.102 ("Application") indicating that part 2205 applies to the agency's "development, procurement, maintenance, and use of electronic and information technology," and a new section at § 2205.135 ("Electronic and information technology requirements") that thoroughly explains the agency's responsibilities under section 508. The proposed additions are consistent with language used by the Access Board. 36 CFR 1194.1, .2. Additionally, in § 2205.103 ("Definitions"), OSHRC proposes (1) adding a definition describing the source material for section 508—a similar sentence already exists describing the source material for section 504; (2) adding the definitions of "Electronic and Information technology" and "Information technology" set forth by the Access Board, 39 CFR 1194.4; and (3) revising the definition of "Complete complaint" to indicate its coverage of violations alleged under section 508, as well as section 504. Further, OSHRC proposes adding language to § 2205.111 ("Notice") to extend the notice requirements to section 508.

OSHRC also proposes revising the procedures in § 2205.170 ("Compliance procedures") to provide more detailed instructions for filing and processing complaints and appeals alleging violations of section 504, and to incorporate instructions for those who allege violations of section 508. As noted, section 508 directs agencies to use the same procedures for processing section 508 complaints as they use for section 504 complaints. The EEOC, however, recently explained in its own notice of rulemaking that "[t]he part 1614 process is reserved for complaints alleging employment discrimination," and that an allegation under section 508 of "discrimination in access to electronic and information technology * * * is outside the scope of part 1614." Therefore, the proposed revisions to § 2205.170(a) and (b) make clear that part 1614 is not applicable to section 508 complaints, but that OSHRC's procedures specifically set forth in its regulations are applicable to both section 504 and 508 complaints.

In addition to amendments resulting from section 508, OSHRC is proposing the following deletions, and corrections and amendments to part 2205. As to the proposed deletions, several provisions include compliance deadlines that have already expired. Section 2205.110 requires that OSHRC complete, by August 24, 1987, a self-evaluation of policies and practices that do not or may not meet the requirements of the regulation. It further requires that a description of areas examined, problems identified, and modifications made be kept on file for at least three years. Also, paragraph (c) of § 2205.150 requires OSHRC to "comply with the obligations established under [paragraphs (a) and (b)] by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible"; and paragraph (d) of that provision requires OSHRC to "develop, by February 23, 1987, a transition plan setting forth the steps necessary to complete [structural changes to facilities]" in the event that such changes are required. Because the latest of these given time frames has long passed, § 2205.110 and paragraphs (c) and (d) of § 2205.150 should be deleted.

Also, the cross-references in several provisions are outdated. The fourth definition of "qualified handicapped person," found at § 2205.103, cross-references 29 CFR 1613.702(f), and two other provisions—§§ 2205.140 and .170(b)—cross-reference 29 CFR part 1613. Part 1613, however, was superseded by part 1614 in 1992. Federal Sector Equal Employment Opportunity, 57 FR 12634 (Apr. 10, 1992) (final rule). The current version of § 1614.203(b) cross-references and adopts all definitions in part 1630, and the definition of "qualified individual with a disability" is at 29 CFR 1630.2(m). Therefore, the cross-reference in § 2202.103 should be changed to 29 CFR 1630.2(m), and the cross-reference to part 1613 in §§ 2205.140 and .170(b) should be changed to part 1614. Further, § 2205.151 cross-references 41 CFR 101–19.600 to 101–19.607, which previously set forth the standard for the Architectural Barriers Act, 42 U.S.C. 4151–4157. In 2002, the regulatory provisions pertaining to the standard were re-designated as 41 CFR 102–76.60 to 102–76.95. Real Property Policies, 67 FR 76882 (Dec. 13, 2002) (final rule). Section 2205.151 should therefore be amended to reflect this re-designation.

Additionally, only the acronym for "telecommunication devices for deaf persons" should be used in § 2205.160, as both the phrase and acronym already appear in § 2205.103; the head of the agency should be referred to as the "Chairman" throughout the part, as this term is used in the OSH Act itself, 29 U.S.C. 661(a); and, in § 2205.103, additional legislative history should be added to the definition of "Section 504." Finally, the 1992 amendments to the Rehabilitation Act, Public Law 102–569, 106 Stat. 4344, which replaced the term "handicap" with the term "disability," requires that OSHRC, in turn, similarly amend all such references in part 2205.

II. Statutory and Executive Order Reviews

Executive Orders 12866 and 13132, and the Unfunded Mandates Reform Act of 1995: OSHRC is an independent regulatory agency and, as such, is not subject to the requirements of E.O. 12866, E.O. 13132, or the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

Regulatory Flexibility Act: OSHRC certifies under the Regulatory Flexibility Act, 5 U.S.C. 605(b), that these rules, if adopted, would not have a significant economic impact on a substantial number of small entities, because it applies exclusively to a federal agency and individuals accessing the services of a federal agency. For this reason, a regulatory flexibility analysis is not required.

Paperwork Reduction Act of 1995: OSHRC has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* does not apply because these rules do not contain any information collection requirements that require the approval of OMB.

Congressional Notification: This proposed rule is not a major rule under the Congressional Review Act, 5 U.S.C. 804(2).

List of Subjects in 29 CFR Part 2205

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities, Access to electronic and information technology.

Signed at Washington, DC, on the 10th day of May 2011.

Thomasina V. Rogers,

Chairman.

For the reasons set forth in the preamble, OSHRC proposes that Chapter XX, Part 2205 of Title 29, Code of Federal Regulations, is revised to read as follows:

PART 2205—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION AND IN ACCESSIBILITY OF COMMISSION ELECTRONIC AND INFORMATION TECHNOLOGY

Sec.

Authority: 29 U.S.C. 794; 29 U.S.C. 794d.

§ 2205.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service. This part also effectuates section 508 of the Rehabilitation Act of 1973, as amended, with respect to the accessibility of electronic and information technology developed, procured, maintained, or used by the agency.

§ 2205.102 Application.

This part applies to all programs or activities conducted by the agency and to its development, procurement, maintenance, and use of electronic and information technology.

§ 2205.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504 or section 508. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Electronic and Information technology includes information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term electronic and information technology includes, but is not limited to, telecommunications products (such as telephones), information kiosks and transaction machines, World Wide Web sites, multimedia, and office equipment such as copiers and fax machines. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation are not information technology.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with a disability means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

Information technology means any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term information technology includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

Qualified individual with a disability means—

(1) With respect to any agency program or activity under which a

person is required to perform services or to achieve a level of accomplishment, an individual with a disability who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) *Qualified individual with a disability* is defined for purposes of employment in 29 CFR 1630.2(m), which is made applicable to this part by § 2205.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L.99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Section 508 means section 508 of the Rehabilitation Act of 1973, Pub. L. 93–112, Title V, section 508, as added Pub. L. 99–506, Title VI, section 603(a), Oct. 21, 1986, 100 Stat. 1830, and amended Pub. L. 100–630, Title II, section 206(f), Nov. 7, 1988, 102 Stat. 3312; Pub. L. 102–569, Title V, section 509(a), Oct. 29, 1992, 106 Stat. 4430; Pub. L. 105–220, Title IV, section 408(b), Aug. 7, 1998, 112 Stat. 1203.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 2205.104–2205.110 [Reserved]

§ 2205.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the Chairman finds necessary to apprise such persons of the protections against discrimination assured them by section 504 or the access to technology provided under section 508 and this regulation.

§§ 2205.112–2205.129 [Reserved]

§ 2205.130 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with a disability the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of individuals without disabilities from the benefits of a program limited by Federal statute or Executive order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive order to a different class of individuals with disabilities is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

§§ 2205.131–2205.134 [Reserved]

§ 2205.135 Electronic and information technology requirements.

(a) In accordance with section 508 and the standards published by the Architectural and Transportation Barriers Compliance Board at 36 CFR part 1194, the agency shall ensure, absent an undue burden, that the electronic and information technology developed, procured, maintained, or used by the agency allows:

(1) Individuals with disabilities who are agency employees or applicants to have access to and use of information

and data that is comparable to the access to and use of information and data by agency employees who are individuals without disabilities; and

(2) Individuals with disabilities who are members of the public seeking information or services from the agency to have access to and use of information and data that is comparable to the access to and use of information and data by such members of the public who are not individuals with disabilities.

(b) When development, procurement, maintenance, or use of electronic and information technology that meets the standards at 36 CFR part 1194 would impose an undue burden, the agency shall provide individuals with disabilities covered by this section with the information and data involved by an alternative means of access that allows the individuals to use the information and data.

§§ 2205.136–2205.139 [Reserved]

§ 2205.140 Employment.

No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities.

§§ 2205.141–2205.148 [Reserved]

§ 2205.149 Program accessibility: discrimination prohibited.

Except as otherwise provided in § 2205.150, no qualified individual with a disability shall, because the agency's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 2205.150 Program accessibility: existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph (a) does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with this paragraph (a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Chairman or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of paragraph (a) of this section in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (3) of this section, alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with disabilities into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

§ 2205.151 Program accessibility: new construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 102–76.60 to 102–76.95, apply to buildings covered by this section.

§§ 2205.152–2205.159 [Reserved]

§ 2205.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with a disability.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, TDD's or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Chairman or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

§§ 2205.161–2205.169 [Reserved]

§ 2205.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs or activities conducted by the agency in violation of section 504. Paragraphs (c) through (j) of this section also apply to all complaints alleging a violation of the agency's responsibility to procure electronic and information technology under section 508, whether filed by members of the public or agency employees or applicants.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c)(1) Any person who believes that he or she has been subjected to discrimination prohibited by this part or that the agency's procurement of electronic and information technology has violated section 508, or an authorized representative of such person, may file a complaint with the Executive Director.

(2) The Executive Director shall be responsible for coordinating implementation of this section. Complaints shall be sent to Executive Director, Occupational Safety and Health Review Commission, One Lafayette Centre, 1120 20th Street, NW., 9th Floor, Washington, DC 20036–3457. Complaints shall be filed with the Executive Director within 180 days of the alleged act of discrimination. A complaint shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the agency. The agency may extend this time period for good cause.

(d)(1) The agency shall accept a complete complaint that is filed in accordance with paragraph (c) of this section and over which it has jurisdiction. The Executive Director shall notify the complainant and the respondent of receipt and acceptance of the complaint.

(2) If the agency receives a complaint that is not complete, the Executive Director shall notify the complainant, within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Executive Director shall dismiss the complaint without prejudice and shall so inform the complainant.

(3) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(e) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by individuals with disabilities.

(f) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(g) Appeals of the findings of fact and conclusions of law or remedies must be filed with the Chairman by the complainant within 90 days of receipt from the agency of the letter required by paragraph (f) of this section. The agency may extend this time for good cause. Appeals shall be sent to the Chairman, Occupational Safety and Health Review Commission, One Lafayette Centre, 1120 20th Street, NW., 9th Floor, Washington, DC 20036–3457. An appeal shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the agency. It should be clearly marked "Appeal of Section 504 decision" or "Appeal of Section 508 decision" and should contain specific objections explaining why the complainant believes the initial decision was factually or legally wrong. Attached to the appeal letter should be a copy of the initial decision being appealed.

(h) Timely appeals shall be accepted and decided by the Chairman. The Chairman shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Chairman determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(i) The time limits cited in paragraphs (f) and (h) of this section may be extended with the permission of the Assistant Attorney General.

(j) The agency may delegate its authority for conducting complaint investigations to other Federal agencies or may contract with non-Federal entities to conduct such investigations, except that the authority for making the final determination may not be delegated.

§§ 2205.171–2205.999 [Reserved]

[FR Doc. 2011–12404 Filed 5–23–11; 8:45 am]

BILLING CODE 7600–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0277]

RIN 1625–AA08

Special Local Regulations for Marine Events; Lake Gaston, Enterprise, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishment of Special Local Regulations for "The Crossing" swim event, to be held on the waters of Lake Gaston, adjacent to the Eaton Ferry Bridge in Enterprise, North Carolina. This Special Local Regulation is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on Lake Gaston under the Eaton Ferry Bridge and within 100 yards east of the bridge during the swim event.

DATES: Comments and related material must be received by the Coast Guard on or before June 23, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0277 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail BOSN3 Joseph M. Edge, Coast Guard Sector North Carolina, Coast Guard; telephone 252–247–4525, e-mail *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0277), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2011–0277" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0277" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

On August 13, 2011 from 8:30 a.m. to 12 p.m. The Organization to Support the Arts, Infrastructure, and Learning on Lake Gaston, also known as O'SAIL, will sponsor "The Crossing" on the waters of Lake Gaston, adjacent to Enterprise, North Carolina. The swim event will consist of approximately 200 swimmers entering Lake Gaston at the Morning Star Marina on the north bank of Lake Gaston, east of the Eaton Ferry Bridge, and swimming south along the eastern side of Eaton Ferry Bridge to the Waterview Restaurant. A fleet of spectator vessels are expected to gather near the event site to view the competition. To provide for the safety of the participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during this event.

In an effort to enhance safety of event participants the channel in the vicinity of Eaton Ferry Bridge will remain closed during event on August 13, 2011 from 8:30 a.m. to 12 p.m. The Coast Guard will temporarily restrict access to this section of Lake Gaston during the event.

Discussion of Proposed Rule

The Coast Guard proposes to establish Special Local Regulations that will restrict vessel movement on the specified waters of Lake Gaston, Enterprise, NC. During the Marine Event no vessel will be allowed to transit the waterway unless the vessel is given permission from the Patrol Commander to transit.

The Special Local Regulation will encompass the waters of Lake Gaston under the Eaton Ferry Bridge, latitude 36°31′06″ North, longitude 077°57′37″ West, and within 100 yards of the eastern side of Eaton Ferry Bridge. All vessels are prohibited from transiting this section of the waterway while the regulation is in effect. Entry into the regulated area will not be permitted except as specifically authorized by the Captain of the Port or a designated representative. To request permission to transit the area, mariners may contact Coast Guard Sector North Carolina at (252) 247–4570. The regulated area will be enforced from 8:30 a.m. to 12 p.m. on August 13, 2011. This proposed restriction on vessel movement on and access to this waterway is aimed at protecting the safety of the swimmers participating in the event.

Regulatory Analyses

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

Regulatory Planning and Review

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

Although this regulation will restrict access to the area, the effect of this rule will not be significant because the regulated area will be in effect for a limited time, from 8:30 a.m. to 12 p.m., on August 13, 2011. The Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly, and the regulated area will apply only to the section of Lake Gaston in the immediate vicinity of the Eaton Ferry Bridge. Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of recreational vessels intending to transit the specified portion of Lake Gaston from 8:30 a.m. to 12 p.m. on August 13, 2011.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will only be in effect for 3 and one-half hours from 8:30 a.m. to 12 p.m. The regulated area applies only to the section of Lake Gaston in the vicinity of the Eaton Ferry Bridge and traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the swim course. The Patrol Commander will allow non-participating vessels to transit the event area once all swimmers are safely clear of navigation channels and vessel traffic areas. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CWO3 Joseph Edge, Waterways Management Division Chief, Coast Guard Sector North Carolina, at (252) 247–4525. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call 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 proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination, under figure 2–1, paragraph 34(h) of the Instruction, that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. This special local regulation is necessary to provide for the safety of the general public and event participants from potential hazards associated with movement of vessels near the event area. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

2. Add a temporary § 100.35–T05–0277 to read as follows:

§ 100.35–T05–0277 Lake Gaston, Enterprise, NC.

(a) *Regulated area.* The following location is a regulated area: All waters of of Lake Gaston directly under the Eaton Ferry Bridge, latitude 36°31′06″ North, longitude 077°57′37″ West, and within 100 yards of the eastern side of the bridge at Enterprise, North Carolina. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector North Carolina.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector North Carolina with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* means all vessels participating in the "The Crossing" swim event under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

(4) *Spectator* means all persons and vessels not registered with the event sponsor as participants or official patrol.

(c) *Special local regulations:* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels in the vicinity of the regulated area. When hailed or signaled by an official patrol vessel, a vessel approaching the regulated area shall immediately comply with the directions given. Failure to do so may result in termination of voyage and citation for failure to comply.

(2) The Coast Guard Patrol Commander may terminate the event, or the operation of any support vessel participating in the event, at any time it is deemed necessary for the protection of life or property. The Coast Guard may be assisted in the patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(3) Vessel traffic, not involved with the event, may be allowed to transit the regulated area with the permission of the Patrol Commander. Vessels that desire passage through the regulated area shall contact the Coast Guard Patrol Commander on VHF–FM marine band radio for direction. Only participants and official patrol vessels are allowed to enter the regulated area.

(4) All Coast Guard vessels enforcing the regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22 (157.1 MHz). The Coast Guard will issue marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Enforcement period:* This section will be enforced from 8:30 a.m. to 12 p.m. on August 13, 2011.

Dated: April 18, 2011.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2011–12545 Filed 5–23–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket No. USCG–2011–0264

RIN 1625–AA00

Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend 33 CFR Part 165.929 Safety Zones; Annual Events requiring safety zones in the Captain of the Port Lake Michigan zone. This proposed rule is intended to amend, establish, or delete the rules that restrict vessels from portions of water areas during events that pose a hazard to public safety. The safety zones amended or established by this proposed rule are necessary to protect spectators, participants, and vessels from the hazards associated with various maritime events.

DATES: Comments and related materials must be received by the Coast Guard on or before June 23, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0264 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail BM1 Adam Kraft, Prevention Department, Coast Guard, Sector Lake Michigan, Milwaukee, WI, telephone (414) 747–7154, e-mail *Adam.D.Kraft@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0264), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2011–0264" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0264" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Currently, 33 CFR 165.929 lists eighty-three different locations in the Captain of the Port Lake Michigan zone at which safety zones have been permanently established. Each of these eighty-three safety zones correspond to an annually recurring marine event. On April 1, 2011, the Coast Guard refined the internal boundaries of its Ninth District, resulting in changes to the Captain of the Port Lake Michigan zone. Consequently, eleven of the aforementioned eighty-three safety zones are now located within Captain of the Port Sault Ste. Marie zone. In addition to the boundary change initiated by the Coast Guard, the details of four of the annually recurring events have changed. Finally, the Captain of the Port, Sector Lake Michigan has determined that three additional recurring marine events require the implementation of permanent safety zones.

Discussion of Proposed Rule

This proposed rule will amend the regulations found in 33 CFR 165.929, Annual Events requiring safety zones in the Captain of the Port Lake Michigan zone. Specifically, this proposed rule will revise § 165.929 in its entirety. The revision will include the deletion of eleven of the safety zones; the modification of the name, location, and enforcement periods of four other safety zones; and the addition of three new safety zones. These safety zones are necessary to protect vessels and people from the hazards associated with

firework displays, boat races, and other marine events. Such hazards include obstructions to the navigable channels, explosive dangers associated with fireworks, debris falling into the water, high speed boat racing, and general congestion of waterways. Although this proposed rule will remain in effect year round, the safety zones within it will be enforced only immediately before, during, and after each corresponding marine event.

The Captain of the Port, Sector Lake Michigan, will notify the public when the safety zones in this proposal will be enforced. In keeping with 33 CFR 165.7(a), the Captain of the Port, Sector Lake Michigan, will use all appropriate means to notify the affected segments of the public. This will include, as practicable, publication in the **Federal Register**, Broadcast Notice to Mariners and/or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will, as practicable, issue a Broadcast Notice to Mariners notifying the public when any enforcement period is cancelled.

Entry into, transiting, or anchoring within each of the proposed safety zones is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative. All persons and vessels permitted to enter one of the safety zones established by this proposed rule shall comply with the instructions of the Captain of the Port, Sector Lake Michigan, or his or her designated representative. The Captain of the Port, Sector Lake Michigan, or his or her designated representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in any one of the below established safety zones while the safety zone is being enforced. These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: Each safety zone in this proposed rule will be in effect for only a few hours within any given 24 hour period. Each of the safety zones will be in effect only once per year. Furthermore, these safety zones have been designed to allow traffic to pass safely around each zone. Moreover, vessels will be allowed to pass through each zone at the discretion of the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact BM1 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed 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 proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule will not affect the 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 proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise § 165.929 to read as follows:

§ 165.929 Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone.

(a) St. Patrick's Day Fireworks; Manitowoc, WI.

(1) *Location.* All waters of the Manitowoc River and Manitowoc Harbor, near the mouth of the Manitowoc River on the south shore, within the arc of a circle with a 100-foot radius from the fireworks launch site located in position 44°05′30″ N, 087°39′12″ W (NAD 83).

(i) *Enforcement date and time.* The third Saturday of March; 5:30 p.m. to 7 p.m.

(2) [Reserved]

(b) Michigan Aerospace Challenge Sport Rocket Launch; Muskegon, MI.

(1) *Location.* All waters of Muskegon Lake, near the West Michigan Dock and Market Corp facility, within the arc of a circle with a 1500-yard radius from the rocket launch site located in position 43°14′21″ N, 086°15′35″ W (NAD 83).

(2) Enforcement date and time. The last Saturday of April; 8 a.m. to 4 p.m.

(c) Tulip Time Festival Fireworks; Holland, MI.

(1) *Location.* All waters of Lake Macatawa, near Kollen Park, within the arc of a circle with a 1000-foot radius from the fireworks launch site in position 42°47′23″ N, 086°07′22″ W (NAD 83).

(i) *Enforcement date and time.* The first Friday of May; 7 p.m. to 11 p.m. If the Friday fireworks are cancelled due to inclement weather, then this safety zone will be enforced on the first Saturday of May; 7 p.m. to 11 p.m.

(2) [Reserved]

(d) Rockets for Schools Rocket Launch; Sheboygan, WI.

(1) *Location.* All waters of Lake Michigan and Sheboygan Harbor, near the Sheboygan South Pier, within the arc of a circle with a 1500-yard radius from the rocket launch site located with its center in position 43°44′55″ N, 087°41′52″ W (NAD 83).

(2) *Enforcement date and time.* The first Saturday of May; 8 a.m. to 5 p.m.

(e) Celebrate De Pere; De Pere, WI.

(1) *Location.* All waters of the Fox River, near Voyageur Park, within the arc of a circle with a 500 foot radius from the fireworks launch site located in position 44°27′10″ N, 088°03′50″ W (NAD 83).

(2) *Enforcement date and time.* The Sunday before Memorial Day; 8:30 p.m. to 10 p.m.

(f) Michigan Super Boat Grand Prix; Michigan City, IN.

(1) *Location.* All waters of Lake Michigan in the vicinity of Michigan City, IN. bound by a line drawn from 41°43′42″ N, 086°54′18″ W; then north to 41°43′49″ N, 086°54′31″ W; then east to 41°44′48″ N, 086°51′45″ W; then south to 41°44′42″ N, 086°51′31″ W; then west returning to the point of origin. (NAD 83).

(2) *Enforcement date and time.* The first Sunday of August; 9 a.m. to 4 p.m.

(g) River Splash; Milwaukee, WI.

(1) *Location.* All waters of the Milwaukee River, near Pere Marquette Park, within the arc of a circle with a 300-foot radius from the fireworks

launch site located on a barge in position 43°02′32″ N, 087°54′45″ W (NAD 83).

(2) *Enforcement date and time.* The first Friday and Saturday of June; 9 p.m. to 11 p.m. each day.

(h) International Bayfest; Green Bay, WI.

(1) *Location.* All waters of the Fox River, near the Western Lime Company 1.13 miles above the head of the Fox River, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°31′24″ N, 088°00′42″ W (NAD 83).

(2) *Enforcement date and time.* The second Friday of June; 9 p.m. to 11 p.m.

(i) Harborfest Music and Family Festival; Racine, WI.

(1) *Location.* All waters of Lake Michigan and Racine Harbor, near the Racine Launch Basin Entrance Light, within the arc of a circle with a 200-foot radius from the fireworks launch site located in position 42°43′43″ N, 087°46′40″ W (NAD 83).

(2) *Enforcement date and time.* Friday and Saturday of the third complete weekend of June; 9 p.m. to 11 p.m. each day.

(j) Spring Lake Heritage Festival Fireworks; Spring Lake, MI.

(1) *Location.* All waters of the Grand River, near buoy 14A, within the arc of a circle with a 500-foot radius from the fireworks launch site located on a barge in position 43°04′24″ N, 086°12′42″ W (NAD 83).

(2) *Enforcement date and time.* The third Saturday of June; 9 p.m. to 11 p.m.

(k) Elberta Solstice Festival Fireworks; Elberta, MI.

(1) *Location.* All waters of Betsie Bay, near Waterfront Park, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 44°37′43″ N, 086°14′27″ W (NAD 83).

(2) *Enforcement date and time.* The last Saturday of June; 9 p.m. to 11 p.m.

(l) Pentwater July Third Fireworks; Pentwater, MI.

(1) *Location.* All waters of Lake Michigan and the Pentwater Channel within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°46′57″ N, 086°26′38″ W (NAD 83).

(2) *Enforcement date and time.* July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 4; 9 p.m. to 11 p.m.

(m) Taste of Chicago Fireworks; Chicago, IL.

(1) *Location.* All waters of Monroe Harbor and all waters of Lake Michigan bounded by a line drawn from 41°53′24″ N, 087°35′59″ W; then east to 41°53′15″ N, 087°35′26″ W; then south to 41°52′49″ N, 087°35′26″ W; then southwest to 41°52′27″ N, 087°36′37″ W; then north to 41°53′15″ N, 087°36′33″ W; then east returning to the point of origin (NAD 83).

(2) *Enforcement date and time.* July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 4; 9 p.m. to 11 p.m.

(n) U.S. Bank Fireworks; Milwaukee, WI.

(1) *Location.* All waters and adjacent shoreline of Milwaukee Harbor, in the vicinity of Veteran's park, within the arc of a circle with a 1200-foot radius from the center of the fireworks launch site which is located on a barge with its approximate position located at 43°02′22″ N, 087°53′29″ W (NAD 83).

(2) *Enforcement date and time.* July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 4; 9 p.m. to 11 p.m.

(o) Independence Day Fireworks; Manistee, MI.

(1) *Location.* All waters of Lake Michigan, in the vicinity of the First Street Beach, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°14′51″ N, 086°20′46″ W (NAD 83)

(2) *Enforcement date and time.* July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 4; 9 p.m. to 11 p.m.

(p) Frankfort Independence Day Fireworks; Frankfort, MI.

(1) *Location.* All waters of Lake Michigan and Frankfort Harbor, bounded by a line drawn from 44°38′05″ N, 086°14′50″ W; then south to 44°37′39″ N, 086°14′50″ W; then west to 44°37′39″ N, 086°15′20″ W; then north to 44°38′05″ N, 086°15′20″ W; then east returning to the point of origin (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(q) Freedom Festival Fireworks; Ludington, MI.

(1) *Location.* All waters of Lake Michigan and Ludington Harbor, in the vicinity of the Loomis Street Boat Ramp, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°57′16″ N, 086°27′42″ W (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(r) White Lake Independence Day Fireworks; Montague, MI.

(1) *Location.* All waters of White Lake, in the vicinity of the Montague boat launch, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°24′33″ N, 086°21′28″ W (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(s) Muskegon Summer Celebration July Fourth Fireworks; Muskegon, MI.

(1) *Location.* All waters of Muskegon Lake, in the vicinity of Heritage Landing, within the arc of a circle with a 1000-foot radius from a fireworks launch site located on a barge in position 43°14′00″ N, 086°15′50″ W (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(3) Impact on Special Anchorage Area regulations: Regulations for that portion of the Muskegon Lake East Special Anchorage Area, as described in 33 CFR 110.81(b), which are overlapped by this regulation, are suspended during this event. The remaining area of the Muskegon Lake East Special Anchorage Area not impacted by this regulation remains available for anchoring during this event.

(t) Grand Haven Jaycees Annual Fourth of July Fireworks; Grand Haven, MI.

(1) *Location.* All waters of The Grand River between longitude 087°14′00″ W, near The Sag, then west to longitude 087°15′00″ W, near the west end of the south pier (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(u) Celebration Freedom Fireworks; Holland, MI.

(1) *Location.* All waters of Lake Macatawa, in the vicinity of Kollen Park, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°47′23″ N, 086°07′22″ W (NAD 83).

(2) *Enforcement date and time.* July 4, 2007; 9 p.m. to 11 p.m. Thereafter, this section will be enforced the Saturday prior to July 4; 9 p.m. to 11 p.m. If the fireworks are cancelled due to inclement weather, then this safety zone will be enforced the Sunday prior to July 4; 9 p.m. to 11 p.m.

(v) Van Andel Fireworks Show; Holland, MI.

(1) *Location.* All waters of Lake Michigan and the Holland Channel within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°46′21″ N, 086°12′48″ W (NAD 83).

(2) *Enforcement date and time.* July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 4; 9 p.m. to 11 p.m.

(w) Independence Day Fireworks; Saugatuck, MI.

(1) *Location.* All waters of Kalamazoo Lake within the arc of a circle with a 1000-foot radius from the fireworks launch site in position 42°38′52″ N, 086°12′18″ W (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(x) South Haven Fourth of July Fireworks; South Haven, MI.

(1) *Location.* All waters of Lake Michigan and the Black River within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°24′08″ N, 086°17′03″ W (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(y) St. Joseph Fourth of July Fireworks; St. Joseph, MI.

(1) *Location.* All waters of Lake Michigan and the St. Joseph River within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°06′48″ N, 086°29′5″ W (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(z) Town of Dune Acres Independence Day Fireworks; Dune Acres, IN.

(1) *Location.* All waters of Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 41°39′23″ N, 087°04′59″ W (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(aa) Gary Fourth of July Fireworks; Gary, IN.

(1) *Location.* All waters of Lake Michigan, approximately 2.5 miles east of Gary Harbor, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 41°37′19″ N, 087°14′31″ W (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(bb) Joliet Independence Day Celebration Fireworks; Joliet, IL.

(1) *Location.* All waters of the Des Plains River, at mile 288, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 41°31′31″ N, 088°05′15″ W (NAD 83).

(2) *Enforcement date and time.* July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 4; 9 p.m. to 11 p.m.

(cc) Glencoe Fourth of July Celebration Fireworks; Glencoe, IL.

(1) *Location.* All waters of Lake Michigan, in the vicinity of Lake Front Park, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 42°08′17″ N, 087°44′55″ W (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(dd) Lakeshore Country Club Independence Day Fireworks; Glencoe, IL.

(1) *Location.* All waters of Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°08′27″ N, 087°44′57″ W (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(ee) Shore Acres Country Club Independence Day Fireworks; Lake Bluff, IL.

(1) *Location.* All waters of Lake Michigan, approximately one mile north of Lake Bluff, IL, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°17′59″ N, 087°50′03″ W (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(ff) Kenosha Independence Day Fireworks; Kenosha, WI.

(1) *Location.* All waters of Lake Michigan and Kenosha Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°35′17″ N, 087°48′27″ W (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(gg) Fourthfest of Greater Racine Fireworks; Racine, WI.

(1) *Location.* All waters of Lake Michigan and Racine Harbor, in the vicinity of North Beach, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°44′17″ N, 087°46′42″ W (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(hh) Sheboygan Fourth of July Celebration Fireworks; Sheboygan, WI.

(1) *Location.* All waters of Lake Michigan and Sheboygan Harbor, in the vicinity of the south pier, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°44′55″ N, 087°41′51″ W (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(ii) Manitowoc Independence Day Fireworks; Manitowoc, WI.

(1) *Location.* All waters of Lake Michigan and Manitowoc Harbor, in the vicinity of south breakwater, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°05′24″ N, 087°38′45″ W (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(jj) Sturgeon Bay Independence Day Fireworks; Sturgeon Bay, WI.

(1) *Location.* All waters of Sturgeon Bay, in the vicinity of Sunset Park, within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 44°50′37″ N, 087°23′18″ W (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(kk) Fish Creek Independence Day Fireworks; Fish Creek, WI.

(1) *Location.* All waters of Green Bay, in the vicinity of Fish Creek Harbor, within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 45°07′52″ N, 087°14′37″ W (NAD 83).

(2) *Enforcement date and time.* The first Saturday after July 4; 9 p.m. to 11 p.m.

(ll) Celebrate Americafest Fireworks; Green Bay, WI.

(1) *Location.* All waters of the Fox River between the railroad bridge located 1.03 miles above the mouth of the Fox River and the Main Street Bridge located 1.58 miles above the mouth of the Fox River, including all waters of the turning basin east to the mouth of the East River.

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(mm) Marinette Fourth of July Celebration Fireworks; Marinette, WI.

(1) *Location.* All waters of the Menominee River, in the vicinity of Stephenson Island, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 45°06′09″ N, 087°37′39″ W and all waters located between the Highway U.S. 41 bridge and the Hattie Street Dam (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(nn) Evanston Fourth of July Fireworks; Evanston, IL.

(1) *Location.* All waters of Lake Michigan, in the vicinity of Centennial Park Beach, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 42°02′56″ N, 087°40′21″ W (NAD 83).

(2) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5; 9 p.m. to 11 p.m.

(oo) Muskegon Summer Celebration Fireworks; Muskegon,MI.

(1) *Location.* All waters of Muskegon Lake, in the vicinity of Heritage Landing, within the arc of a circle with a 1000-foot radius from a fireworks barge located in position 43°14′00″ N, 086°15′50″ W (NAD 83).

(2) *Enforcement date and time.* The Sunday following July 4; 9 p.m. to 11 p.m.

(3) *Impact on Special Anchorage Area regulations.* Regulations for that portion of the Muskegon Lake East Special Anchorage Area, as described in 33 CFR 110.81(b), which are overlapped by this regulation, are suspended during this event. The remaining area of the Muskegon Lake East Special Anchorage Area is not impacted by this regulation and remains available for anchoring during this event.

(pp) Gary Air and Water Show; Gary, IN.

(1) *Location.* All waters of Lake Michigan bounded by a line drawn from 41°37′42″ N, 087°16′38″ W; then east to 41°37′54″ N, 087°14′00″ W; then south to 41°37′30″ N, 087°13′56″ W; then west to 41°37′17″ N, 087°16′36″ W; then north returning to the point of origin (NAD 83).

(2) *Enforcement date and time.* Friday, Saturday, and Sunday of the second weekend of July; from 10 a.m. to 9 p.m. each day.

(qq) Milwaukee Air and Water Show; Milwaukee, WI.

(1) *Location.* All waters and adjacent shoreline of Lake Michigan and Bradford Beach located within a 4000-yard by 1000-yard rectangle. The rectangle will be bounded by the points beginning at 43°02′50″ N, 087°52′36″ W; then northeast to 43°04′33″ N, 087°51′12″ W; then northwest to 43°04′40″ N, 087°51′29″ W; then southwest to 43°02′57″ N, 087°52′53″ W; the southeast returning to the point of origin (NAD 83).

(2) *Enforcement date and time.* Thursday, Friday, Saturday, and Sunday of the first weekend of August; from 10 a.m. to 5 p.m. each day.

(rr) Annual Trout Festival Fireworks; Kewaunee, WI.

(1) *Location.* All waters of Kewaunee Harbor and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°27′29″ N, 087°29′45″ W (NAD 83).

(2) *Enforcement date and time.* Friday of the second complete weekend of July; 9 p.m. to 11 p.m.

(ss) Michigan City Summerfest Fireworks; Michigan City, IN.

(1) *Location.* All waters of Michigan City Harbor and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 41°43′42″ N, 086°54′37″ W (NAD 83).

(2) *Enforcement date and time.* Sunday of the first complete weekend of July; 9 p.m. to 11 p.m.

(tt) Port Washington Fish Day Fireworks; Port Washington, WI.

(1) *Location.* All waters of Port Washington Harbor and Lake Michigan, in the vicinity of the WE Energies coal dock, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°23′07″ N, 087°51′54″ W (NAD 83).

(2) *Enforcement date and time.* The third Saturday of July; 9 p.m. to 11 p.m.

(uu) Bay View Lions Club South Shore Frolics Fireworks; Milwaukee, WI.

(1) *Location.* All waters of Milwaukee Harbor and Lake Michigan, in the vicinity of South Shore Park, within the arc of a circle with a 500-foot radius from the fireworks launch site in position 42°59′42″ N, 087°52′52″ W (NAD 83).

(2) *Enforcement date and time.* Friday, Saturday, and Sunday of the second or third weekend of July; 9 p.m. to 11 p.m. each day.

(vv) Venetian Festival Fireworks; St. Joseph, MI.

(1) *Location.* All waters of Lake Michigan and the St. Joseph River, near the east end of the south pier, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°06′48″ N, 086°29′15″ W (NAD 83).

(2) *Enforcement date and time.* Saturday of the third complete weekend of July; 9 p.m. to 11 p.m.

(ww) Joliet Waterway Daze Fireworks; Joliet, IL.

(1) *Location.* All waters of the Des Plaines River, at mile 287.5, within the arc of a circle with a 300-foot radius from the fireworks launch site located in position 41°31′15″ N, 088°05′17″ W (NAD 83).

(2) *Enforcement date and time.* Friday and Saturday of the third complete weekend of July; 9 p.m. to 11 p.m. each day.

(xx) EAA Airventure; Oshkosh, WI.

(1) *Location.* All waters of Lake Winnebago bounded by a line drawn from 43°57′30″ N, 088°30′00″ W; then south to 43°56′56″ N, 088°29′53″ W; then east to 43°56′40″ N, 088°28′40″ W; then north to 43°57′30″ N, 088°28′40″ W; then west returning to the point of origin (NAD 83).

(2) *Enforcement date and time.* The last complete week of July, beginning Monday and ending Sunday; from 8 a.m. to
8 p.m. each day.

(yy) Venetian Night Fireworks; Saugatuck, MI.

(1) *Location.* All waters of Kalamazoo Lake within the arc of a circle with a 500-foot radius from the fireworks launch site located on a barge in position 42°38′52″ N, 086°12′18″ W (NAD 83).

(2) *Enforcement date and time.* The last Saturday of July; 9 p.m. to 11 p.m.

(zz) Roma Lodge Italian Festival Fireworks; Racine, WI.

(1) *Location.* All waters of Lake Michigan and Racine Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°44′04″ N, 087°46′20″ W (NAD 83).

(2) *Enforcement date and time.* Friday and Saturday of the last complete weekend of July; 9 p.m. to 11 p.m.

(aaa) Venetian Night Fireworks; Chicago, IL.

(1) *Location.* All waters of Monroe Harbor and all waters of Lake Michigan

bounded by a line drawn from 41°53′03″ N, 087°36′36″ W; then east to 41°53′03″ N, 087°36′21″ W; then south to 41°52′27″ N, 087°36′21″ W; then west to 41°52′27″ N, 087°36′37″ W; then north returning to the point of origin (NAD 83).

(2) *Enforcement date and time.* Saturday of the last weekend of July; 9 p.m. to 11 p.m.

(bbb) Port Washington Maritime Heritage Festival Fireworks; Port Washington, WI.

(1) *Location.* All waters of Port Washington Harbor and Lake Michigan, in the vicinity of the WE Energies coal dock, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°23′07″ N, 087°51′54″ W (NAD 83).

(2) *Enforcement date and time.* Saturday of the last complete weekend of July or the second weekend of August; 9 p.m. to 11 p.m.

(ccc) Grand Haven Coast Guard Festival Fireworks; Grand Haven, MI.

(1) *Location.* All waters of the Grand River between longitude 087°14′00″ W, near The Sag, then west to longitude 087°15′00″ W, near the west end of the south pier (NAD 83).

(2) *Enforcement date and time.* First weekend of August; 9 p.m. to 11 p.m.

(ddd) Sturgeon Bay Yacht Club Evening on the Bay Fireworks; Sturgeon Bay, WI.

(1) *Location.* All waters of Sturgeon Bay, in the vicinity of the Sturgeon Bay Yacht Club, within the arc of a circle with a 500-foot radius from the fireworks launch site located on a barge in position 44°49′33″ N, 087°22′26″ W (NAD 83).

(2) *Enforcement date and time.* The first Saturday of August; 9 p.m. to 11 p.m.

(eee) Hammond Marina Venetian Night Fireworks; Hammond, IN.

(1) *Location.* All waters of Hammond Marina and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 41°41′53″ N, 087°30′43″ W (NAD 83).

(2) *Enforcement date and time.* The first Saturday of August; 9 p.m. to 11 p.m.

(fff) North Point Marina Venetian Festival Fireworks; Winthrop Harbor, IL.

(1) *Location.* All waters of Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°28′55″ N, 087°47′56″ W (NAD 83).

(2) *Enforcement date and time.* The second Saturday of August; 9 p.m. to 11 p.m.

(ggg) Waterfront Festival Fireworks; Menominee, MI.

(1) *Location.* All waters of Green Bay, in the vicinity of Menominee Marina, within the arc of a circle with a 1000-foot radius from a fireworks barge in position 45°06′17″ N, 087°35′48″ W (NAD 83).

(2) *Enforcement date and time.* Saturday following first Thursday in August; 9 p.m. to 11 p.m.

(hhh) Ottawa Riverfest Fireworks; Ottawa, IL.

(1) *Location.* All waters of the Illinois River, at mile 239.7, within the arc of a circle with a 300-foot radius from the fireworks launch site located in position 41°20′29″ N, 088°51′20″ W (NAD 83).

(2) *Enforcement date and time.* The first Sunday of August; 9 p.m. to 11 p.m.

(iii) Algoma Shanty Days Fireworks; Algoma, WI.

(1) *Location.* All waters of Lake Michigan and Algoma Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°36′24″ N, 087°25′54″ W (NAD 83).

(2) *Enforcement date and time.* Sunday of the second complete weekend of August; 9 p.m. to 11 p.m.

(jjj) New Buffalo Ship and Shore Festival Fireworks; New Buffalo, MI.

(1) *Location.* All waters of Lake Michigan and New Buffalo Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 41°48′09″ N, 086°44′49″ W (NAD 83).

(2) *Enforcement date and time.* The second Sunday of August; 9 p.m. to 11 p.m.

(kkk) Pentwater Homecoming Fireworks; Pentwater, MI.

(1) *Location.* All waters of Lake Michigan and the Pentwater Channel within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°46′56.5″ N, 086°26′38″ W (NAD 83).

(2) *Enforcement date and time.* Saturday following the second Thursday of August; 9 p.m. to 11 p.m.

(lll) Chicago Air and Water Show; Chicago, IL.

(1) *Location.* All waters and adjacent shoreline of Lake Michigan and Chicago Harbor bounded by a line drawn from 41°55′54″ N at the shoreline, then east to 41°55′54″ N, 087°37′12″ W, then southeast to 41°54′00″ N, 087°36′00″ W (NAD 83), then southwestward to the northeast corner of the Jardine Water Filtration Plant, then due west to the shore.

(2) *Enforcement date and time.* The third Thursday, Friday, Saturday, and Sunday of August; from 9 a.m. to 6 p.m. each day.

(mmm) Downtown Milwaukee BID 21 Fireworks; Milwaukee, WI.

(1) *Location.* All waters of the Milwaukee River between the Kilbourn Avenue Bridge at 1.7 miles above the Milwaukee Pierhead Light to the State Street Bridge at 1.79 miles above the Milwaukee Pierhead Light.

(2) *Enforcement date and time.* The third Thursday of November; 6 p.m. to 8 p.m.

(nnn) New Year's Eve Fireworks; Chicago, IL.

(1) *Location.* All waters of Monroe Harbor and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 41°52′41″ N, 087°36′37″ W (NAD 83).

(2) *Enforcement date and time.* December 31; 11 p.m. to January 1; 1 a.m.

(ooo) Cochrane Cup; Blue Island, IL.

(1) *Location.* All waters of the Calumet Saganashkee Channel from the South Halstead Street Bridge at 41°39′27" N, 087°38′29″ W; to the Crawford Avenue Bridge at 41°39′05″ N, 087°43′08″ W; and the Little Calumet River from the Ashland Avenue Bridge at 41°39′7″ N, 087°39′38″ W; to the junction of the Calumet Saganashkee Channel at 41°39′23″ N, 087°39′00″ W (NAD 83).

(2) *Enforcement date and time.* The first Saturday of May; 6:30 a.m. to 5 p.m.

(ppp) World War II Beach Invasion Re-enactment; St. Joseph, MI.

(1) *Location.* All waters of Lake Michigan in the vicinity of Tiscornia Park in St. Joseph, MI beginning at 42°06′55″ N, 086°29′23″ W; then west/northwest along the north breakwater to 42°06′59″ N, 086°29′41″ W; then northwest 100 yards to 42°07′01″ N, 086°29′44″ W; then northeast 2,243 yards to 42°07′50″ N, 086°28′43″ W; then southeast to the shoreline at 42°07′39″ N, 086°28′27″ W; then southwest along the shoreline to the point of origin (NAD 83).

(2) *Enforcement date and time.* The third Saturday of June; 8 a.m. to 2 p.m.

(qqq) Ephraim Fireworks; Ephraim, WI.

(1) *Location.* All waters of Eagle Harbor and Lake Michigan within the arc of a circle with a 750-foot radius from the fireworks launch site located on a barge in position 45°09′18″ N, 087°10′51″ W (NAD 83).

(2) Enforcement date and time. The third Saturday of June; 9 p.m. to 11 p.m.

(rrr) Thunder on the Fox; Elgin, IL.

(1) *Location.* All waters of the Fox River, near Elgin, Illinois, between Owasco Avenue, located at approximate position 42°03′06″ N, 088°17′28″ W and the Kimball Street bridge, located at

approximate position 42°02′31″ N, 088°17′22″ W (NAD 83).

(2) E*nforcement date and time.* Friday, Saturday, and Sunday of the third weekend in June; 10 a.m. to 7 p.m. each day.

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

(A) Designated representative means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port, Sector Lake Michigan, to monitor a safety zone, permit entry into a zone, give legally enforceable orders to persons or vessels within a safety zone, and take other actions authorized by the Captain of the Port, Sector Lake Michigan.

(B) Public vessel means a vessel that is owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(ii) Regulations.

(A) The general regulations in 33 CFR 165.23 apply.

(B) All persons and vessels must comply with the instructions of the Captain of the Port, Sector Lake Michigan, or his or her designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(C) All vessels must obtain permission from the Captain of the Port, Sector Lake Michigan, or his or her designated representative to enter, move within or exit a safety zone established in this section when the safety zone is enforced. Vessels and persons granted permission to enter one of the safety zones listed in this section shall obey all lawful orders or directions of the Captain of the Port, Sector Lake Michigan, or his or her designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(iii) *Suspension of Enforcement.* If the Captain of the Port, Sector Lake Michigan, suspends enforcement of any of these zones earlier than listed in this section, the Captain of the Port, Sector Lake Michigan, or his or her designated representative will notify the public by suspending the respective Broadcast Notice to Mariners.

(iv) *Exemption.* Public vessels, as defined in paragraph (b) of this section, are exempt from the requirements in this section.

(v) *Waiver.* For any vessel, the Captain of the Port, Sector Lake Michigan, or his or her designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

Dated: May 5, 2011.

L. Barndt,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2011–12374 Filed 5–23–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0355; FRL–9304–1]

Revisions to the California State Implementation Plan, Placer County Air Pollution Control District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Placer County Air Pollution Control District (PCAPCD) and Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from surface coatings of metal parts and products. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by *June 23, 2011.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0355, by one of the following methods:

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: PCAPCD Rule 245, "Surface Coating of Metal Parts and Products" and VCAPCD Rule 74.12, "Surface Coating of Metal Parts and Products," In the Rules and Regulations section of this **Federal Register,** we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 25, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–12612 Filed 5–23–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9310–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the California Gulch Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a Notice of Intent to Partially Delete the remaining portions of Operable Unit 9 (OU9), the Residential Populated Areas, of the California Gulch Superfund Site (Site), located in Lake County, Colorado, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), have determined that all appropriate response actions at these identified parcels under CERCLA, other than operation, maintenance, and five-year reviews (include if applicable), have been completed. However, this deletion does not preclude future actions under Superfund.

This partial deletion pertains to the remaining portions of OU9, the Residential Populated Areas. Subunits A and B, residential waste rock piles, and the parks and playgrounds within Operable Unit 9 were partially deleted from the NPL on January 30, 2002. In addition, OU2, OU8, and OU10 have been partially deleted from the NPL. The Yak Tunnel (OU1), D&RGW Slag Piles and Easement (OU3), Upper California Gulch (OU4), ASARCO Smelter/Colorado Zinc-Lead Mill Site (OU5), Stray Horse Gulch (OU6), Apache Tailing (OU7), Arkansas River Floodplain (OU11), and Site-wide Surface and Groundwater Quality (OU12) will remain on the NPL and are not being considered for deletion as part of this action.

DATES: Comments must be received by *June 23, 2011.*

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *http://www.regulations.gov*. Follow online instructions for submitting comments.
- *E-mail: Linda Kiefer, kiefer.linda@epa.gov*
- *Fax:* (303) 312–7151
- *Mail:* Linda Kiefer, Remedial Project Manager, Environmental Protection Agency, Region 8, Mail Code 8EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129
- *Hand delivery:* Environmental Protection Agency, Region 8, Mail Code 8EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1983–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket

All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at: U.S. EPA Region 8, Superfund Records Center, 1595 Wynkoop Street, Denver, CO 80202. (303) 312–6473 or toll free (800) 227–8917; Viewing hours: 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding holidays; and Lake County Public Library, 1115 Harrison Avenue, Leadville, CO 80461, (719) 486–0569

FOR FURTHER INFORMATION CONTACT: Linda Kiefer, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, Mailcode EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6689, *e-mail: kiefer.linda@epa.gov*.

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" Section of today's **Federal Register**, we are publishing a direct final Notice of Partial Deletion for the remaining portions of Operable Unit 9 (OU9), the Residential Populated Areas, of the California Gulch Superfund Site (Site) without prior Notice of Intent for Partial Deletion because EPA views this as a noncontroversial revision and anticipates no adverse comment. We have explained our reasons for this partial deletion in the preamble to the direct final Notice of Partial Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this partial deletion action, we will not take further action on this Notice of Intent for Partial Deletion. If we receive adverse comment(s), we will withdraw the direct final Notice of Partial Deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Partial Deletion based on this Notice of Intent for Partial Deletion. We will not institute a second comment period on this Notice of Intent for Partial Deletion. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Partial Deletion which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: May 10, 2011.

James Martin,

Regional Administrator, Region 8.

[FR Doc. 2011–12766 Filed 5–23–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2011–0017; MO 92210–0–0008B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Spot-Tailed Earless Lizard as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the spot-tailed earless lizard (*Holbrookia lacerata*) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing this species may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the spot-tailed earless lizard is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding the spot-tailed earless lizard, including its two subspecies (*Holbrookia lacerata lacerata* and *Holbrookia lacerata subcaudalis*). Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before July 25, 2011. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section, below), the deadline for submitting an electronic comment is Eastern Daylight Time on this date.

ADDRESSES: You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the box that reads "Enter Keyword or ID," enter the Docket number for this finding, which is [Docket No. FWS–R2–ES–2011–0017]. Check the box that reads "Open for Comment/Submission," and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.
- *U.S. mail or hand-delivery:* Public Comments Processing, *Attn:* [Docket No. FWS–R2–ES–2011–0017]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

After July 25, 2011, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office; by U.S. mail at 10711 Burnet Road, Suite 200, Austin, TX 78758; by telephone (512–490–0057); or by facsimile (512–490–0974). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the spot-tailed earless lizard from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The biology, range, and population trends of the species and of both its subspecies, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(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. (3) Information related to the specific threats to the spot-tailed earless lizard and both subspecies of the spot-tailed earless lizard.

If, after the status review,we determine that listing the spot-tailed earless lizard or either of its subspecies is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by the spot-tailed earless lizard, we request data and information on:

(1) What may constitute "physical or biological features essential to the conservation of the species";

(2) Where these features are currently found; and

(3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on "specific areas outside the geographical area occupied by the species" that are "essential to the conservation of the species." Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific

journal articles or other publications) to allow us to verify any scientific or commercial information you include.

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. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed 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 you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying 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.*

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On January 21, 2010, we received a petition dated January 13, 2010, from Wild Earth Guardians, requesting that the spot-tailed earless lizard be listed as threatened or endangered and that critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). In a July 19, 2010, letter to the petitioner, we responded that we reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. This finding addresses the petition.

Previous Federal Action

There have been no previous Federal actions related to this species.

Species Information

The spot-tailed earless lizard (*Holbrookia lacerata*) is a small lizard that averages 11.5 to 15.2 centimeters (cm) (4.5 to 6.0 inches (in)) from the nose to the end of the tail, and has been described as the most conspicuously spotted of all earless lizards (Conant and Collins 1991, p. 101).

The spot-tailed earless lizard is divided into two distinct subspecies, based on morphological (physical) differences and geographic separation (Conant and Collins 1991, p. 101; Dixon 2000, p. 27). The northern spot-tailed earless lizard subspecies, *Holbrookia laceratalacerata,* has two rows of dark blotches down each side of its back. The dark blotches are often so close together that they appear to be two dark rows down each side of the lizard's back. This subspecies has on average 13 femoral pores, which are openings containing a wax-like material found on the underside of the thighs and are used to leave a scent trail when they rub their legs on the ground. The southern spot-tailed earless lizard, *Holbrookia laceratasubcaudalis,* has 2 distinct rows of dark blotches down each side of its back and an average of 16 femoral pores under each hind leg.

We accept the characterization of *Holbrookia lacerata* lacerate and *Holbrookia laceratasubcaudalis* as subspecies of the petitioned species, *H. lacerata,* because they were properly described in peer-reviewed literature and are recognized as subspecies by knowledgeable herpetologists: *H. l. lacerata* since 1880, and *H. l. subcaudata* since 1956 (ITIS 2009, p. 1).

In addition to the two subspecies having distinct morphological characteristics (Dixon 2000, p. 27), they are separated geographically along the Balcones Escarpment, which is a geologic fault zone in central Texas (Axtell 1968, p. 56.1). It seems that the Balcones Escarpment serves as a barrier to genetic exchange (Axtell 1968, p. 56.1; Hammerson *et al.* 2007, p. 4). The northern subspecies historically occurred throughout the Edwards Plateau (a geographic region in west-central Texas), while the southern subspecies historically occurred through south Texas into parts of Mexico's States of Coahuila, Nuevo Leon, and Tamaulipas (Axtell 1968, p. 56.1; Conant and Collins 1991, p. 101; Dixon 2000, p. 73; Texas Parks and Wildlife Department (TPWD) 2005a, p. 1; Hammerson *et al.* 2007, p. 2). In central and southern Texas, the spot-tailed earless lizard occurs across 75 counties (TPWD 2005a, p. 1). The TPWD's Comprehensive Wildlife Conservation Strategy (2005b, pp. 1093–1094) suggests that the spot-tailed earless lizard is declining in Texas, especially along the periphery of its range, but does not refer to any specific studies or surveys. Also, the petitioner did not provide any information, and we could not find any readily available in our files, regarding the current species' status or distribution in Mexico. Because population and distribution information is limited throughout the species' range, research is needed to verify the suggested decline in Texas and to determine the species' current distribution.

The spot-tailed earless lizard is found in a variety of habitats, but typically they use habitat with sparse vegetation or bare ground (Axtell 1968, p. 56.1). Spot-tailed earless lizards inhabit flat and open prairies or meadows, sand dunes, chaparral-shrubland, mixed woodland areas, and graded roads in Texas (Axtell 1968, p. 56.1; TPWD 2005b, p. 1093), as well as the desert habitats of northern Mexico (Axtell 1968, p. 56.1). The lizard tends to burrow in soil, fallen logs, and other ground debris, and avoid obstructions, such as waterways, buildings, and pavement (Axtell 1968, p. 56.1).

The TPWD (2005a, p. 1093) described differences in habitat associations between the two spot-tailed lizard subspecies. The northern spot-tailed earless lizard apparently prefers caliche soils (hardened deposit of calcium carbonate found in arid regions that cements together other materials,

including gravel, sand, clay, and silt) of the Edwards Plateau in moderately open prairie-brushland, oak-juniper woodlands, and mesquite associations. The southern spot-tailed earless lizard is most often found in flatter areas in association with dark clay, clay-loam soils, and in mesquite-prickly-pear associations.

In conclusion, the spot-tailed earless lizard's present population status is largely unknown. The TPWD suggests that the species may be declining along the periphery of its range, but more surveys are needed to determine the species' current distribution. To ensure that the status review is comprehensive and up to date, we are soliciting information on the species' status and distribution throughout its range.

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(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.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act.

In making this 90-day finding, we evaluated whether information regarding threats to the spot-tailed earless lizard, as presented in the petition and documented in other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Information Provided in the Petition

The petitioner asserts that the conversion of native habitat to cropland and nonnative grasses for livestock, as well as habitat fragmentation by road construction and development, are threats to the spot-tailed earless lizard.

In support of the conversion of native habitat to cropland and nonnative grasses for livestock, the petitioner cited NatureServe (2009, pp. 1–2) and TPWD's Conservation Wildlife Strategy (2005a, p. 1094), which mentioned that the eastern portion of the species' historical range is now used for agricultural production.

Also, in support of its assertion that the species is threatened by habitat fragmentation from road construction and development, the petitioner presented data adapted from the U.S. Census Bureau showing that the total human population of the counties included within the spot-tailed earless lizard's historical range increased by 33 percent between 1990 and 2008, to over 6.2 million people (U.S. Census Bureau 2009). Additionally, the petitioner stated that 5 counties in Texas (Williamson, Hays, Comal, Kendall, and Guadalupe) within the lizard's historical range are among the 100 fastest growing counties in the United States (U.S. Census Bureau 2009, pp. 1–5).

Evaluation of Information Provided in the Petition and Available in Service Files

In reference to the petitioner's claims concerning the conversion of native habitat to cropland and nonnative grasses for livestock, the information presented appears to be reliable.The petitioner cited TPWD's Comprehensive Wildlife Conservation Strategy, which noted that the spread of nonnative grasses is a problem in Texas (TPWD 2005b, p. 88). However, the petitioner provided no information indicating how the spread of nonnative grasses may be acting on the species. Also, the petitioner provided no information on the conversion of native habitat to cropland, the extent to which this may be occurring within the range of the species, or how this might impact the spot-tailed earless lizard. Therefore, the petitioner has not provided substantial information indicating that conversion of native habitat to cropland or nonnative grasses for livestock may be a threat to the spot-tailed earless lizard, and our files do not contain any information to support the petitioner's claims.

In reference to the petitioner's claim that habitat fragmentation by road construction and development is a threat to the species, the information appears reliable. The petitioner referenced human population growth in conjunction with habitat fragmentation by road construction, but provided no information indicating how this potential threat may be acting on the species. Also, we have no information available in our files indicating that the spot-tailed earless lizard's movements are inhibited by roads or that roads are acting as barriers to the lizard. Based on the above, the petitioner has not provided substantial information indicating that habitat fragmentation by road construction and development may be a threat to the spot-tailed earless lizard.

We believe that crossing highways may result in mortality to individual lizards; however, there is no evidence indicating that road-related mortalities are having an impact on the species'status. We believe the impact of road-related mortality is minimal because of the species' small home range size. In a similar species, Jones and Droge (1980, pp. 127–132) found that the mean home range of the lesser earless lizard (*Holbrookia maculata*) was less than 1 acre (0.4 hectare). Therefore, it's likely that the spot-tailed earless lizard would have to be living right next to a road for the possibility of a road-related mortality to occur. We have no information readily available in our files and the petitioner provided no information indicating that road-related mortalities may have an impact on the species' overall status. Based on the above, the petitioner has not provided substantial information indicating that road-related mortalities may be a threat to the spot-tailed earless lizard.

In summary, we find that the petition, along with information readily available in our files, has not presented

substantial information that the spot-tailed earless lizard may warrant listing due to the present or threatened destruction, modification, or curtailment of its habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petition states that the extent of impacts due to this factor is currently unknown and suggests that the Service should investigate whether collection of the spot-tailed earless lizard for scientific purposes or for the pet trade is a threat to this species.

Evaluation of Information Provided in the Petition and Available in Service Files

We currently have no information readily available in our files that suggests that overutilization for commercial, recreational, scientific, or educational purposes may be a threat to this species.Therefore, we find that the petition, along with information available in our files, has not presented substantial information that the spot-tailed earless lizard may warrant listing due to this factor.

C. Disease or Predation

Information Provided in the Petition

The petitioner asserts that the redimported fire ant (*Solenopsisinvicta*) (fire ant), a nonnative species, is a threat to the spot-tailed earless lizard. In support of this threat, the petitioner cited Hammerson *et al.* (2007, p. 6), which stated that the existence of fire ants in the spot-tailed earless lizard's habitat is a threat to the species. Also, the petitioner provided a map showing that the current range of the fire ant covers the entire current spot-tailed earless lizard rangein Texas (USDA 2006, p. 1).The petitioner states that fire ants prey on reptiles and their eggs, and are reportedly contributing to the decline of native species (Reagan *et al.* 2000, pp. 475–478; Allen *et al.* 2004, pp. 88–103). Fire ants also prey on hatchlings and adult animals (Wojcik *et al.* 2001, pp. 16–23).

Additionally, the petitioner noted that habitat disturbances can lead to invasions by fire ants across specific locations (Zettler *et al.* 2004, p. 517). Fire ant colonies multiply in disturbed and early-succession areas, such as woody debris in clearcut areas (Todd *et al.* 2008, p. 540). Thus, clear cutting in spot-tailed earless lizard woodland habitat could trigger fire ant invasions. Further, the petitioner provided support by citing Todd *et al.* (2008, p. 540), which noted that spot-tailed earless lizards burrow into fallen logs and other ground debris, and use these substrates as escape habitat or cover in harsh environmental conditions, but these habitats can function as a trap for the lizards in areas where fire ants have invaded.

Evaluation of Information Provided in the Petition and Available in Service Files

In reference to the petitioner's claims that the fire ant is a threat to the spot-tailed earless lizard, the petitioner provided no information and we have none readily available in our files concerning the spread of the fire ant over the spot-tailed earless lizard's range in Mexico. However, information readily available in our files supports the petitioner's claim that the current range of the fire ant covers the entire current spot-tailed earless lizard range in Texas.

Information in our files also indicates that fire ant predation may be a factor that is negatively impacting the overall status of the spot-tailed earless lizard. The fire ant is an aggressive and indiscriminate predator that can have devastating and longlasting impacts on native populations and communities (Vinson and Sorenson 1986, p. 17; Porter and Savignano 1990, p. 2095). The petitioner provided references that support the claim that fire ants predate on eggs, hatchlings, and adults of a variety of species, including lizards (Wojcik *et al.* 2001, pp. 19–20). Although there is no direct information on the decline of the spot-tailed earless lizard due to fire ant predation, the information presented about other reptiles, in addition to the aggressive and indiscriminate predatory nature of the fire ant, leads us to believe there may be negative impacts to the spot-tailed earless lizard. It is likely that fire ants are preying on adults, hatchlings, and eggs of spot-tailed earless lizards. Therefore, information provided by the petitioner and readily available in our files constitutes substantial information indicating that fire ants may be a threat to the spot-tailed earless lizard.

Regarding the petitioner's claim that habitat disturbances can lead to invasions by fire ants across specific locations, the information provided appears reliable. A study by Todd *et al.* (2008, pp. 542–545) found that fire ant abundance increases with disturbances to native species habitat. Porter *et al.* (1988, p. 916) reported that the invasion of fire ants is known to be aided by any disturbance that clears a site of heavy vegetation and disrupts the native ant community. Therefore, it is likely that disturbances such as a clear cutting can trigger fire ant invasions.

In summary, there is substantial information on the adverse effects of fire ants on native fauna in general, including reptiles, and substantial information that fire ants may pose a threat to the spot-tailed earless lizard through direct predation on adults, hatchlings, and eggs. In addition, there is substantial information that fire ants occur across a large part of the spot-tailed earless lizard's range. Therefore, we find that the information provided in the petition, along with information readily available in our files, has presented substantial information indicating that the species may warrant listing due to predation, primarily by the fire ant.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petitioner asserts that the spot-tailed earless lizard has no regulatory protection. Yet, the petitioner also cites NatureServe (2009, p. 2) and states that one to two spot-tailed earless lizard populations are appropriately protected and managed. Other citations provided by the petitioner include the IUCN's Red List Ranks (Hammerson et al. 2007) and TPWD's Wildlife Conservation Strategy (TPWD 2005b).

Evaluation of Information Provided in the Petition and Available in Service Files

In reference to the petitioner's claim that the lack of regulatory protection is a threat to the spot-tailed earless lizard, the petitioner provided no information indicating how this potential impact may be acting on the species. We have identified the fire ant as a potential threat, but we are not aware of any regulatory mechanism that would address this potential threat. Therefore, we find that neither the petition nor information readily available in our files presented substantial information that the species may warrant listing due to the inadequacy of existing regulator mechanisms.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition

The petitioner asserts that pollutants, obstructions to movement, and climate change are threats to the spot-tailed earless lizard. In support of pollutants being a threat, the petitioner stated that the most severe threat to the spot-tailed earless lizard's survival is the use of agricultural pesticides and herbicides (NatureServe 2009, p. 1). Also, the

petitioner pointed out that environmental pollutants are likely major threats to reptiles around the globe and gave examples of the adverse effects of carbaryl (a chemical in the carbonate family used chiefly as an insecticide) on locomotion, energy use, and overall fitness of terrestrial lizards (DuRant 2006, pp. 39–41; DuRant *et al.* 2007a, pp. 446–447; DuRant *et al.* 2007b, pp. 20–23) and atrazine's (an organic compound used as an herbicide) possible effect as an endocrine disruptor in reptiles (Deb 2005, p. 401).

In support of obstructions to movement being a threat, the petitioner asserted that spot-tailed earless lizards that try to cross highways usually do not survive (NatureServe 2009, p. 1). In addition, the petitioner alleges that buildings, pavement, human structures, rivers, ponds, and lakes are barriers to the lizard's movement, but no other evidence or references are provided to indicate whether the spot-tailed earless lizard is exposed to the barriers or whether the species responds to these barriers in a way that causes actual impacts to the species.

In regards to climate change being a threat to the spot-tailed earless lizard, the petitioner cited studies on the potential adverse effects of climate change. For example, the petitioner claims that climate change is expected to cause more extreme and frequent weather events that include droughts, heavy rainfall, and heat waves (Karl *et al.* 2009, p. 126). The petitioner further states that climate-driven changes are likely to combine with other human-induced stresses to increase the vulnerability of natural ecosystems to pests, invasive species, and loss of native species (Karl *et al.* 2009, p. 126). Fischlin *et al.* (2007, pp. 224–226) proposed that the productivity, structure, and carbon balance of grassland ecosystems are extremely sensitive to climatic shifts. Root and Schneider (2002, pp. 29–30) addressed how climate is likely to affect animals with habitat associations in particular vegetation types. The ranges of animals relying on plant communities could become compressed, and in some instances, both the plants and the animals could become extinct (Root and Schneider 2002, pp. 29–30).

Evaluation of Information Provided in the Petition and Available in Service Files

In reference to the petitioner's claim that pollutants may be a threat to the spot-tailed earless lizard, the information appears reliable. References cited in the petition on the effects of carbonate are studies on the western fence lizard (*Sceloporusoccidentalis*), which is in the same family as the spot-tailed earless lizard (DuRant 2006, pp. 39–41; DuRant *et al.* 2007a, pp. 446–447; DuRant *et al.* 2007b, pp. 20–23). Because the lizards are in the same family, it is plausible to assume that if the spot-tailed earless lizard is exposed to carbonate pollutants, similar results to exposure to the pesticides would likely occur. Also, the reference to atrazine is only a very general reference to reptiles (Deb 2005, p. 401), but it does suggest that the pesticide could act as an endocrine disruptor in the spot-tailed earless lizard. However, the petition does not provide information on the current or historical use of these pesticides or any other agricultural pesticides within the spot-tailed earless lizard's range, and we have no information readily available in our files indicating the extent of use of these pollutants in the species' range, or if these pollutants may be having an impact on the spot-tailed earless lizard. Consequently, the petitioner has not provided substantial information indicating that pollutants may be a threat to the spot-tailed earless lizard.

In reference to the petitioner's claim that obstruction to movements is a threat to the spot-tailed earless lizard, the petitioner did not provide reliable data to support their claim. We previously addressed the petitioner's claims regarding roads as a threat under Factor A above. Concerning other barriers to movement, the petitioner provided no information indicating how these potential impacts may be acting on the species. Therefore, the petitioner has not provided substantial information indicating that obstruction to movement may be a threat to the species.

In reference to the petitioner's claim that climate change is a threat to the spot-tailed earless lizard, the information appears to be reliable. However, the petitioner provided references to studies that discussed climate change in general terms, that discussed the potential impacts of climate change in areas outside of the spot-tailed earless lizard's range, and that discussed the potential impacts of climate change on unrelated species. No information was provided by the petitioner indicating whether the spot-tailed earless lizard might be sensitive to environmental changes resulting from climate change, and no information was provided regarding the extent of potential exposure of the spot-tailed earless lizard to climate change impacts. The petitioner cited Root and Schneider (2002, pp. 29–30) who addressed how climate is likely to affect animals with habitat associations in particular vegetation types. However, the spot-tailed earless lizard is found in a variety of habitats across a broad geographic range (Axtell 1968, p. 56.1; Conant and Collins 1991, p. 101; Dixon 2000, p. 73; TPWD 2005a, p. 1; Hammerson *et al.* 2007, p. 2). Also, it is hypothesized that plant and animal communities are generally expected to shift toward the poles or increase in altitude with increasing global temperatures and drought conditions (Parmesan *et al.* 2000, p. 443; Cameron and Scheel 2001, p. 676; Root and Schneider 2002, pp. 22–23; Karl *et al.* 2009, pp. 72, 132). We believe that increasing global temperatures and drought conditions may have little impact on spot-tailed earless lizards, because the species is physiologically and behaviorally well adapted to warm, arid landscapes. Therefore, based on the above information, the petitioner has not provided substantial information indicating that the environmental changes associated with climate change may be a threat to the spot-tailed earless lizard.

In summary, we find that the petition, along with information readily available in our files, did not present substantial information that the spot-tailed earless lizard may warrant listing due to other natural or manmade factors.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that listing both the northern and southern subspecies of the spot-tailed earless lizard throughout their entire ranges may be warranted. This finding is based on information provided under factor C, the potential threat from fire ant predation.

Because we have found that the petition presents substantial information indicating that listing the spot-tailed earless lizard may be warranted, we are initiating a status review to determine whether listing the spot-tailed earless lizard under the Act is warranted.

The "substantial information" standard for a 90-day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is

conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are staff members of the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 17, 2011.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–12752 Filed 5–23–11; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 76, No. 100
Tuesday, May 24, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meeting of the Assembly of the Administrative Conference of the United States

AGENCY: Administrative Conference of the United States.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Assembly of the Administrative Conference of the United States to consider proposed recommendations which deal with: (1) Legal issues arising from e-Rulemaking, (2) Federal government rulemaking procedures for dealing with public comments, (3) Federal agency use of video hearings in managing high-volume caseloads, and (4) enhanced ethics requirements for contractors that do business with the government. To facilitate public participation, the Conference is inviting public comment on the recommendations that will be considered at the meeting.

DATES: Meeting dates are Thursday, June 16, 2011, 2 p.m. to 6 p.m.; and Friday, June 17, 2011, 9 a.m. to 12:30 p.m. Comments on the recommendations must be received by Friday, June 10, 2011.

ADDRESSES: The Public Meeting will be held at the Pew Charitable Trusts Conference Center, 901 E Street, NW., Washington, DC 20004.

Submit comments to either of the following: e-mail comments@acus.gov, with "June 2011 Plenary Session Comments" in the subject line; or mail to June 2011 Plenary Session Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Shawne McGibbon, General Counsel (the Designated Federal Officer), Administrative Conference of the United States, Suite 706 South, 1120 20th Street, NW., Washington, DC 20036; Telephone 202–480–2088.

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States makes recommendations to administrative agencies, the President, Congress, and the Judicial Conference of the United States regarding the improvement of Federal administrative procedures (5 U.S.C. 594). The objectives of these recommendations are to ensure that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest, to promote more effective public participation and efficiency in the rulemaking process, reduce unnecessary litigation in the regulatory process, improve the use of science in the regulatory process, and improve the effectiveness of laws applicable to the regulatory process (5 U.S.C. 591).

The membership of the Conference meeting in plenary session constitutes the Assembly of the Conference (5 U.S.C. 595). *The Assembly will meet in plenary session to consider four proposed recommendations:*

(1) The recommendation "Legal Considerations in e-Rulemaking" addresses several issues raised by the evolution from paper to electronic rulemaking procedures. Among other things, it recommends that agencies use reliable software to analyze whether comments are identical or nearly identical, to save the cost of reading identical comments separately; and that agencies should maintain electronic records in lieu of paper records where possible, which should also produce a cost savings.

(2) The recommendation "Rulemaking Comments" addresses a variety of topics related to the "comment" phase of notice-and-comment rulemaking (independent of the innovations introduced by e-rulemaking, which are covered by the previous recommendation). Among other things, this recommendation urges agencies to promote more useful comments by explaining the characteristics of effective comments, to have policies on late comments, and to make use of reply comment periods where appropriate.

(3) The recommendation on "Video Hearings" addresses agency use of video teleconferencing technology, particularly in the processing of high-volume caseloads. At least one agency has successfully used this technology to save nearly 60 million dollars annually and reduce wait times for adjudication—all with no significant effect on case outcomes. The recommendation urges other agencies to consider whether they could benefit from similar use of video technology, provides factors agencies should consider as they make that decision, and provides best practices for effective use of video.

(4) The recommendation "Government Contractor Ethics" addresses improvements to ethics regulation for government contractor employees, who are now performing more and more of the Federal government's work, but who are subject to much less extensive ethics regulation than government employees. The recommendation attempts to promote ethical behavior by government contractors without imposing excessive compliance costs. The recommendation is addressed primarily to the Federal Acquisition Regulatory Council, which oversees the Federal Acquisition Regulation (FAR). It recommends, in part, that the FAR Council adopt model contract clauses on contractor ethics that agencies could use when entering into contracts for government services.

This meeting will be open to the public and may end prior to the designated end time if business is concluded earlier. Members of the public are invited to attend the meeting in person, subject to space limitations. The Conference will also provide remote public access to the meeting via webcast. Anyone who wishes to attend the meeting in person is asked to RSVP to *comments@acus.gov,* no later than June 14, 2011, in order to facilitate entry. Members of the public who attend the meetings of the full Assembly are not permitted to speak except in the discretion of the Chairman, with unanimous approval of the members. The Conference welcomes the attendance of the public and will make every effort to accommodate persons with physical disabilities or special needs. If you need special accommodations due to disability, please inform the contact person noted

above no later than 7 days in advance of the meeting.

Members of the public may submit written comments on any or all of the recommendations to either of the addresses listed above no later than June 10, 2011. Copies of the proposed recommendations and information on remote access will be available at *http://www.acus.gov.* All comments relating to the individual proposed recommendations will be delivered to the Designated Federal Officer listed on this notice and will be posted on the Conference's Web site after the close of the comment period. Comments received at this stage will be available to the full Assembly prior to their consideration of the final recommendations.

Dated: May 18, 2011.

Shawne McGibbon,

General Counsel.

[FR Doc. 2011–12715 Filed 5–23–11; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 18, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (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 should be *addressed to:* Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *oira_submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Supplemental Nutrition Assistance Program—Store Applications.

OMB Control Number: 0584–0008.

Summary of Collection: Section 9(a) of the Food and Nutrition Act of 2008 as amended, (7 U.S.C. 2018 *et seq.*) requires that the Food and Nutrition Service (FNS) provide for the submission of applications for approval by retailers, wholesalers, meal service providers, certain types of group homes, shelters, and state-contracted restaurants that wish to participate in the Supplemental Nutrition Program (SNAP). FNS is responsible for reviewing the application in order to determine whether or not applicants meet eligibility requirements, and make determinations whether to grant or deny authorization to accept and redeem SNAP benefits. FNS will collect information using forms FNS–252, Supplemental Nutrition Assistance Program Application for Store, FNS–252–E, On line Supplemental Nutrition Assistance Program Application for Store, FNS 252–2, Supplemental Nutrition Assistance Program for Meal Service Application, FNS–252–C, Corporate Supplemental Application, and FNS 252–R, Supplemental Nutrition Assistance Program for Stores Reauthorization.

Need and Use of the Information: FNS will collect information to determine the eligibility of retail food stores, wholesale food concern, and food service organizations applying for authorization to accept and redeem food stamp benefits and to monitor these firms for continued eligibility, and to sanction stores for noncompliance with the Act, and for Program management. Disclosure of information other than Employer Identification Numbers and Social Security Numbers may be made to Federal and State law enforcement or investigative agencies or instrumentalities administering or enforcing specified Federal or State laws, or regulations issued under those law. Without the information on the application or reauthorization application, the consequence to the Federal program is the Agency's reduced ability to effectively monitor accountability for program compliance and to detect fraud and abuse would be severely jeopardized.

Description of Respondents: Business or other for-profit.

Number of Respondents: 107,232.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16,125.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–12682 Filed 5–23–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 18, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (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 should be *addressed to:* Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *oira_submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to

the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: South American Cactus Moth; Quarantine and Regulations.

OMB Control Number: 0579–0337.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701—*et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Animal and Plant Health Inspection Service (APHIS) amended the domestic quarantined regulations to establish regulations to restrict the interstate movement of South American cactus moth host material including nursery stock and plant pests for consumption, from infested areas of the United States. This action helps to prevent the artificial spread of South American cactus moth into non-infested areas of the United States.

Need and Use of the Information: APHIS will collect information using Certificate (PPQ 540) and Compliance Agreement (PPQ 519). The certificate is used for domestic movement of treated articles relating to quarantines. Certificates are issued for regulated articles when an inspector or other person authorized to issue certificates finds that the articles have met the conditions of the regulations and may be safely moved interstate without further restrictions. The Compliance agreements are provided for the convenience of persons who are involved in the growing, handling, or moving of regulated articles from quarantined areas. Without this information, APHIS could not provide an effective domestic quarantine program to prevent the artificial spread of the South American cactus moth within the United States.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 6.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 10.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–12683 Filed 5–23–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0033]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations to protect endangered species of terrestrial plants and with regulations concerning procedures related to the forfeiture of plants or other property.

DATES: We will consider all comments that we receive on or before July 25, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2011-0033* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0033, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Available supporting documents and any comments we receive on this docket may be viewed on the Regulations.gov Web site (follow the link above and click "View Docket Folder") or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: For information on regulations to protect endangered species of terrestrial plants and concerning forfeiture procedures, contact Dr. John Veremis, National CITES Coordinator, Plant Safeguarding and Pest Identification, PPQ, APHIS, 4700 River Road Unit 52, Riverdale, MD 20737; (301) 734–8891. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Endangered Species Regulations and Forfeiture Procedures.

OMB Number: 0579–0076.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the United States Department of Agriculture (USDA) is responsible for enforcing provisions of the Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) that pertain to the importation, exportation, or reexportation of plants.

As part of this mission, the Animal and Plant Health Inspection Service (APHIS), USDA, administers regulations at 7 CFR part 355, "Endangered Species Regulations Concerning Terrestrial Plants." In accordance with these regulations, any individual, nursery, or other entity wishing to engage in the business of importing, exporting, or reexporting terrestrial plants listed in the CITES regulations at 50 CFR 17.12 or 23.23 must obtain a protected plant permit from APHIS. Such entities include importers, exporters, or reexporters who sell, barter, collect, or otherwise exchange or acquire terrestrial plants as a livelihood or enterprise engaged in for gain or profit. The requirement does not apply to persons engaged in business merely as carriers or customhouse brokers.

To obtain a protected plant permit, entities must complete an application (PPQ Form 621) and submit it to APHIS for approval. When a permit has been issued, the plants covered by the permit may be imported into the United States, exported, or reexported, provided they are accompanied by documentation required by the regulations and provided all other conditions of the regulations are met.

Effectively regulating entities who are engaged in the business of importing, exporting, or reexporting endangered species of terrestrial plants requires the use of this application process, as well as the use of other information collection activities, such as notifying APHIS of the impending importation, exportation, or reexportation of the plants, marking containers used for the importation, exportation, and reexportation of the plants, and creating

and maintaining records of importation, exportation, and reexportation.

APHIS also administers regulations at 7 CFR part 356, "Forfeiture Procedures," which sets out procedures for the forfeiture of plants or other property by entities in violation of the Endangered Species Act or the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*). Entities whose property is subject to forfeiture may file with APHIS a waiver of forfeiture procedures, a claim of ownership or interest in the seized property and a bond, a request for bonded release of property, a petition for remission or mitigation of forfeiture, or a request for release of property.

The information provided by these information collection activities is critical to APHIS' ability to carry out its responsibilities under the Endangered Species Act and the Lacey Act. These responsibilities include monitoring importation, exportation, and reexportation activities involving endangered species of plants, as well as the investigation of possible violations and the forfeiture of plants or other property.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0929305 hours per response.

Respondents: U.S. importers and exporters of endangered species.

Estimated annual number of respondents: 16,579.

Estimated annual number of responses per respondent: 4.9016828.

Estimated annual number of responses: 81,265.

Estimated total annual burden on respondents: 7,552 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 18th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–12749 Filed 5–23–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0026]

Notice of Request for Extension of Approval of an Information Collection; Accreditation of Nongovernment Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with accrediting nongovernment facilities to perform services related to the export of plants or plant products.

DATES: We will consider all comments that we receive on or before July 25, 2011.

ADDRESSES: *You may submit comments by either of the following methods:*

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2011-0026* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0026, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Available supporting documents and any comments we receive on this docket may be viewed on the *Regulations.gov* Web site (follow the link above and click "View Docket Folder") or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: For information on the accreditation program, contact Mr. Michael Ward, Senior Accreditation Program Manager, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737; (301) 734–5227. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Accreditation of Nongovernment Facilities.

OMB Number: 0579–0130.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS), among other things, provides export certification services to assure other countries that the plants and plant products they are receiving from the United States are free of plant pests specified by the receiving country. This activity is authorized by the Plant Protection Act (7 U.S.C. 7701 *et seq.*).

The export certification regulations, which are contained in 7 CFR part 353, describe the procedures for obtaining certification for plants and plant products offered for export or reexport. Our regulations do not require that we engage in export certification activities; we perform this work as a service to exporters who are shipping plants or plant products to countries that require phytosanitary certification as a condition of entry.

After assessing the condition of the plants or plant products intended for export (*i.e.,* after conducting a phytosanitary inspection), an inspector will issue an internationally recognized phytosanitary certificate, a phytosanitary certificate for reexport, or an export certificate for processed plant products. Laboratory testing of plant or plant product samples is an important component of the certification process.

The regulations allow nongovernment facilities (such as commercial

laboratories and private inspection services) to be accredited by APHIS to perform specific laboratory testing or phytosanitary inspections that could serve as the basis for issuing Federal phytosanitary certificates, phytosanitary certificates for reexport, or export certificates for processed plant products.

The accreditation process requires the use of several information collection activities to ensure that nongovernment facilities applying for accreditation possess the necessary qualifications.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. *These comments will help us:*

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 3.4482758 hours per response.

Respondents: Operators of nongovernment facilities who wish to be accredited to perform laboratory testing or phyosanitary inspection services in connection with APHIS' export certification program and certain employees of such nongovernment facilities.

Estimated annual number of respondents: 15.

Estimated annual number of responses per respondent: 5.8.

Estimated annual number of responses: 87.

Estimated total annual burden on respondents: 300 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 18th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–12751 Filed 5–23–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0024]

Notice of Request for Extension of Approval of an Information Collection; Select Agent Registration

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request extension of approval of an information collection associated with regulations for the possession, use, and transfer of biological agents and toxins that have the potential to pose a severe threat to human and animal health, to animal health, to plant health, or to animal products and plant products.

DATES: We will consider all comments that we receive on or before July 25, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2011&-0024* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2011–0024, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2011–0024.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: For information regarding the select agent registration process associated with the possession, use, or transfer of biological agents and toxins in 7 CFR part 331, contact Dr. Charles Divan, Branch Chief, Agriculture Select Agent Program, RIPPS, PPQ, APHIS, 4700 River Road, Unit 2, Riverdale, MD 20737; (301) 734–8758.

For information regarding the select agent registration process associated with the possession, use, or transfer of biological agents and toxins in 9 CFR part 121, contact Mr. Robert Rice, Security Manager, Agriculture Select Agent Program, Technical Trade Services Team, NCIE, VS, APHIS, 4700 River Road, Unit 2, Riverdale, MD 20737; (301) 734–5557.

For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Select Agent Registration.

OMB Number: 0579–0213.

Type of Request: Extension of approval of an information collection.

Abstract: The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 provides for the regulation of certain biological agents and toxins by the Department of Agriculture (USDA) and the Department of Health and Human Services (HHS). Under section 212 of the Act, USDA regulates biological agents and toxins that have the potential to pose a severe threat to both human and animal health, to animal health, to plant health, or to animal and plant products. The Animal and Plant Health Inspection Service (APHIS) has the primary responsibility for implementing the provisions of the Act within USDA. Select agents and toxins that have been determined to pose a severe threat to both human and animal health or animal products are subject to regulation by both APHIS and the Centers for Disease Control and Prevention (CDC), HHS, which has the primary responsibility for implementing the provisions of the Act within HHS.

APHIS regulations are contained in 7 CFR part 331 (plant) and 9 CFR part 121 (animal and overlap). They require an individual or entity (unless specifically

exempted under the regulations) to register with APHIS or, for overlap agents or toxins, APHIS or CDC, in order to possess, use, or transfer biological agents or toxins.

The registration process is designed to obtain critical information concerning individuals or entities in possession of certain agents or toxins, as well as the specific characteristics of the agents or toxins, including name, strain, and genetic information. These data are needed, in part, to allow APHIS to determine the biosafety and biocontainment level of an entity as well as the entity's security situation. This, in turn, helps APHIS to ensure that appropriate safeguard, containment, and disposal requirements commensurate with the risk of the agent or toxin are present at the entity, thus preventing access to such agents and toxins for use in domestic or international terrorism. APHIS will also request information to determine that individuals seeking to register have a lawful purpose to possess, use, or transfer agents or toxins. Forms PPQ 526, VS 16–3, and VS 16–7 are approved under this collection for use in the registration process.

We are asking the Office of Management and Budget (OMB) to approve our use of the information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.9544673 hours per response.

Respondents: Researchers, universities, research and development organizations, diagnostic laboratories, and other interested parties who possess, use, or transfer select agents or toxins.

Estimated annual number of respondents: 1,163.

Estimated annual number of responses per respondent: 1.0008598.

Estimated annual number of responses: 1,164.

Estimated total annual burden on respondents: 2,275 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 18th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–12753 Filed 5–23–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0049]

Effectiveness Indications Statements in Veterinary Biologics Labeling; Notice of Public Meeting and Request for Comments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are issuing this notice to inform producers and users of veterinary biological products, as well as other interested individuals, that we will be holding a public meeting to discuss a draft guideline (concept paper) concerning effectiveness indications statements in veterinary biologics labeling. We are also making the concept paper available for review and comment.

DATES: The public meeting will be held on Thursday, June 16, 2011, from 9 a.m. to 3 p.m. We will consider all comments that we receive on or before July 25, 2011.

ADDRESSES: The public meeting will be held at the National Centers for Animal Health, 1920 Dayton Avenue, Ames, IA. *You may submit comments on the concept paper by either of the following methods:*

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2011-0049* to submit or view comments and to view the concept paper.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2011–0049, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2011–0049.

Reading Room: You may view the concept paper and any comments we receive on the *Regulations.gov* Web site (see link above) or in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Dee McVey, Center for Veterinary Biologics, VS, APHIS, 1920 Dayton Avenue, Ames, IA 50010; phone (515) 337–6100, fax (515) 337–6120, or e-mail: *dee.mcvey@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) administers and enforces the Virus-Serum-Toxin Act (the Act), as amended (21 U.S.C. 151–159). The regulations issued pursuant to the Act are intended to ensure that veterinary biological products are pure, safe, potent, and effective when used according to label instructions. The regulations in 9 CFR part 112 prescribe requirements for packaging and labeling veterinary biologics. The regulations in part 112 ensure that labeling provides adequate information concerning the expected effectiveness and safety of the product. Current APHIS guidelines (Veterinary Services Memorandum [VSM] No. 800.202—General Licensing Considerations: Efficacy Studies) provide examples of statements that may be used in labeling to describe the indications for use of a product, provided that the product has demonstrated a specified level of performance in an efficacy study that was the basis for issuance of the product license. VSM 800.202 specifies performance requirements and allowable indications statements for four different levels (tiers) of effectiveness.

In July 2009, representatives of veterinary biologics manufacturers and the American Veterinary Medical Association met with APHIS to discuss the Agency's current labeling guidance and to explore the possibility of developing a single indications

statement that would convey clinically useful information to veterinary practitioners and other consumers of veterinary biologics. At that meeting, the American Veterinary Medical Association, which represents the single largest group of consumers of veterinary biologics, informed APHIS that its members consider labeling indications statements that are based on the guidance provided in VSM 800.202 to be confusing and expressed a desire for indications statements that provide insight into the actual performance of the product, including summaries of safety and efficacy data. On the other hand, representatives of the trade associations representing veterinary biologics manufacturers have remarked that their members expend significant resources on studies to provide data to support labeling that includes indications statements that emphasize the unique properties of their product versus that of a competitor. They expressed concern about any change to the labeling regulations that would deemphasize product differences or require public disclosure of proprietary information that could compromise manufacturers' competitive positions in the marketplace.

In response to the concerns expressed by these stakeholders, APHIS has developed a draft policy guideline (concept paper) concerning the wording of indications statements used in veterinary biologics labeling. The draft guideline differs from current guidance regarding label claims in VSM 800.202 in that a single indications statement (*e.g.,* "This product has been shown to be effective for the vaccination of healthy animals X weeks of age or older against * * *") would replace current indications statements that may reflect any of four different levels of effectiveness. In addition to a standardized indications statement, the draft guideline also provides for the public disclosure of a summary (with confidential business information removed) of the efficacy and safety data submitted to APHIS in support of the issuance of the product license. The draft guideline may be viewed on the *Regulations.gov* Web site (see **ADDRESSES** above) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

We are holding a public meeting to solicit input and discussion of any issues that are pertinent to this concept. This meeting is scheduled for Thursday, June 16, 2011. Registration information and copies of the agenda for the meeting may be obtained from the person listed under **FOR FURTHER INFORMATON CONTACT**. The public meeting will begin at 9 a.m. and is scheduled to end at 3 p.m. but may end earlier if all persons wishing to comment have been heard. The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting. If you require special accommodations, such as a sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

You may also submit comments regarding the concept paper using one of the methods described under **ADDRESSES** above.

Done in Washington, DC, this 18th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–12762 Filed 5–23–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Central Montana Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Central Montana Resource Advisory Committee will meet in Stanford, MT. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (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. This will be the second official meeting of the Central Montana Resource Advisory Committee.

DATES: The meeting will be held June 1, 2011, 7 p.m.

ADDRESSES: The meeting will be held at the Judith Ranger District, 109 Central Ave. 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 Judith Ranger District. Please call ahead to (406) 566–2292 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Ron Wiseman, District Ranger, Lewis and Clark National Forest, (406) 566–2292, *rwiseman@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. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed **FOR FURTHER INFORMATION.**

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Discussion and approval of RAC operating guidelines. (2) Discussion of project development and recommendation process. (3) Review and vote on projects. 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 May 18 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 109 Central Ave., Stanford, MT 59479, or by e-mail to *rwiseman@fs.fed.us,* or via facsimile to (406) 566–2408.

Dated: May 9, 2011.

Ron B. Wiseman,

District Ranger.

[FR Doc. 2011–12569 Filed 5–23–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant and Loan Application Deadlines and Funding Levels

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funding availability and solicitation of applications.

SUMMARY: The Rural Utilities Service (RUS) announces its Revolving Fund Program (RFP) application window for Fiscal Year (FY) 2011. In addition to announcing the application window, RUS announces the available funding of $496,000 for RFP competitive grants for the fiscal year.

The RFP is authorized under section 306(a)(2)(B) of the Consolidated Farm and Rural Development Act (Con Act), 7 U.S.C. 1926(a)(2)(B). Under the RFP, qualified private, non-profit organizations receive RFP grant funds to establish a lending program for eligible entities. Eligible entities for the revolving loan fund will be the same entities eligible, under paragraph 1 or 2

of Section 306(a) of the Con Act, 7 U.S.C. 1926(a) or (b), to obtain a loan, loan guarantee, or grant from the RUS Water, Waste Disposal and Wastewater loan and grant programs.

DATES: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must be postmarked and mailed, shipped, or sent overnight *no later* than July 25, 2011 to be eligible for FY 2011 grant funding. Late or incomplete applications will not be eligible for FY 2011 grant funding.
- Electronic copies must be received by July 25, 2011 to be eligible for FY 2011 grant funding. Late or incomplete applications will not be eligible for FY 2011 grant funding.

ADDRESSES: You may obtain application guides and materials for the RFP program at the Water and Environmental Programs (WEP) Web site: *http://www.usda.gov/rus/water/index.htm.* You may also request application guides and materials by contacting Anita O'Brien at (202) 690–3789.

Submit completed paper applications for RFP grants to the USDA Rural Utilities Service, 1400 Independence Ave., SW., Room 2233, STOP 1570, Washington, DC 20250–1570. Applications should be marked "Attention: Assistant Administrator, Water and Environmental Programs."

Submit electronic grant applications at *http://www.grants.gov* (Grants.gov) and follow the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Joyce Taylor, Community Program Specialist, USDA, Rural Utilities Service, Water and Environmental Programs; *telephone:* (202) 720–0499, *fax:* (202) 690–0649.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Grant Program to Establish a Fund for Financing Water and Wastewater Projects (Revolving Fund Program (RFP)).

Announcement Type: Funding Level Announcement, and Solicitation of Applications.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.864.

Dates: You may submit completed application for a RFP grant from July 25, 2011 to July 25, 2011.

Reminder of competitive grant application deadline: Applications must be mailed, shipped or submitted electronically through Grants.gov no later than July 25, 2011 to be eligible for FY 2011 grant funding.

Items in Supplementary Information

I. Funding Opportunity

Drinking water systems are basic and vital to both health and economic development. With dependable water facilities, rural communities can attract families and businesses that will invest in the community and improve the quality of life for all residents. Without dependable water facilities, the communities cannot sustain economic development.

RUS provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans. It supports the sound development of rural communities and the growth of our economy without endangering the environment.

The Revolving Fund Program (RFP) has been established to assist communities with water or wastewater systems. Qualified private, non-profit organizations, who are selected for funding, will receive RFP grant funds to establish a lending program for eligible entities. Eligible entities for the revolving loan fund will be the same entities eligible to obtain a loan, loan guarantee, or grant from the Water and Waste Disposal loan and grant programs administered by RUS, under 7 U.S.C. 1926(a)(1) and (2). As grant recipients, the non-profit organizations will set up a revolving loan fund to provide loans to finance predevelopment costs of water or wastewater projects, or short-term small capital projects not part of the regular operation and maintenance of current water and wastewater systems. The amount of financing to an eligible entity shall not exceed $100,000.00 and shall be repaid in a term not to exceed 10 years. The rate shall be determined in the approved grant work plan.

II. Award Information

Available funds: RUS is making available $496,000 for competitive grants in FY 2011.

III. Eligibility Information

A. Who is eligible to apply?

An applicant is eligible to apply for the RFP grant if it:

1. Is a private, non-profit organization;

2. Is legally established and located within one of the following:

(a) A state within the United States;

(b) The District of Columbia;

(c) The Commonwealth of Puerto Rico; or

(d) A United States territory;

3. Has the legal capacity and authority to carry out the grant purpose;

4. Has a proven record of successfully operating a revolving loan fund to rural areas;

5. Has capitalization acceptable to the Agency, and is composed of at least 51 percent of the outstanding interest or membership being citizens of the United States or individuals who reside in the United States after being legally admitted for permanent residence;

6. Has no delinquent debt to the Federal Government or no outstanding judgments to repay a Federal debt;

7. Demonstrates that it possesses the financial, technical, and managerial capability to comply with Federal and State laws and requirements.

B. What are the basic eligibility requirements for a project?

1. The following activities are authorized under the RFP statute:

(a) Grant funds must be used to capitalize a revolving fund program for the purpose of providing direct loan financing to eligible entities for pre-development costs associated with proposed or with existing water and wastewater systems, or,

(b) Short-term costs incurred for equipment replacement, small-scale extension of services, or other small capital projects that are not part of the regular operations and maintenance activities of existing water and wastewater systems.

2. Grant funds may not be used to pay any of the following:

(a) Payment of the Grant Recipient's administrative costs or expenses, or,

(b) Delinquent debt owed to the Federal Government.

IV. Application and Submission Information

A. *The grant application guide, copies of necessary forms and samples, and the*

RFP regulation are available from these sources:

1. The Internet: *http://www.usda.gov/rus/water/index.htm* or *http://www.grants.gov.*

2. For paper copies of these materials telephone (202) 720–0499.

B. *You may file an application in either paper or electronic format.*

Whether you file a paper or an electronic application, you will need a DUNS number.

1. DUNS Number.

As required by the OMB, all applicants for grants must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying. The Standard Form 424 (SF–424) contains a field for you to use when supplying your DUNS number. Obtaining a DUNS number costs nothing and requires a short telephone call to Dun and Bradstreet. Please see *http://www.grants.gov/applicants/request_duns_number.jsp* for more information on how to obtain a DUNS number or how to verify your organization's number.

For electronic applications, you must file an electronic application at the Web site: *http://www.grants.gov.* You must be registered with Grants.gov before you can submit a grant application. If you have not used Grants.gov before, you will need to register with the CCR and the Credential Provider. You will need a DUNS number to access or register at any of the services.

2. Central Contractor Registration (CCR).

(a) In accordance with 2 CFR part 25, applicants, whether applying electronically or by paper, must be registered in the CCR prior to submitting an application. Applicants may register for the CCR at *https://www.uscontractorregistration.com/or* by calling 1–877–252–2700. Completing the CCR registration process takes up to five business days, and applicants are strongly encouraged to begin the process well in advance of the deadline specified in this notice.

(b) The CCR registration must remain active, with current information, at all times during which an entity has an application under consideration by an agency or has an active Federal Award. To remain registered in the CCR database after the initial registration, the applicant is required to review and update, on an annual basis from the date of initial registration or subsequent updates, its information in the CCR database to ensure it is current, accurate and complete.

3. Applications submitted by paper:

(a) Send or deliver paper applications by the U.S. Postal Service (USPS) or courier delivery services to: Assistant Administrator-Water and Environmental Programs, Rural Utilities Service, 1400 Independence Avenue, SW., STOP 1548, Room S–5145, Washington, DC 20250–1548.

(b) For paper applications mail or ensure delivery of an original paper application (no stamped, photocopied, or initialed signatures) and two copies by the deadline date. The application and any materials sent with it become Federal records by law and cannot be returned to you.

C. *A complete application must meet the following requirements:*

1. To be considered for support, you must be an eligible entity and must submit a complete application by the deadline date. You should consult the cost principles and general administrative requirements for grants pertaining to their organizational type in order to prepare the budget and complete other parts of the application. You also must demonstrate compliance (or intent to comply), through certification or other means, with a number of public policy requirements.

2. Applicants must complete and submit the following forms to apply for a RFP grant:

(a) Standard Form 424, "Application for Federal Assistance"

(b) Standard Form 424A, "Budget Information—Non-Construction Programs"

(c) Standard Form 424B, "Assurances—Non-Construction Programs"

(d) Standard Form LLL, "Disclosure of Lobbying Activity"

(e) Form RD 400–1, "Equal Opportunity Agreement"

(f) Form RD 400–4, "Assurance Agreement (Under Title VI, Civil Rights Act of 1964)

3. The project proposal should outline the project in sufficient detail to provide a reader with a complete understanding of how the loan program will work. Explain what you will accomplish by lending funds to eligible entities. Demonstrate the feasibility of the proposed loan program in meeting the objectives of this grant program. The proposal should cover the following elements:

(a) Present a brief project overview. Explain the purpose of the project, how it relates to RUS' purposes, how you will carry out the project, what the project will produce, and who will direct it.

(b) Describe why the project is necessary. Demonstrate that eligible entities need loan funds. Quantify the number of prospective borrowers or provide statistical or narrative evidence that a sufficient number of borrowers will exist to justify the grant award. Describe the service area. Address community needs.

(c) Clearly state your project goals. Your objectives should clearly describe the goals and be concrete and specific enough to be quantitative or observable. They should also be feasible and relate to the purpose of the loan program.

(d) The narrative should cover in more detail the items briefly described in the Project Summary. It should establish the basis for any claims that you have substantial expertise in promoting the safe and productive use of revolving funds. In describing what the project will achieve, you should tell the reader if it also will have broader influence. The narrative should address the following points:

(1) Document your ability to administer and service a revolving fund in accordance with the provisions of 7 CFR Part 1783.

(2) Document your ability to commit financial resources to establish the RFP with funds your organization controls. This documentation should describe the sources of funds other than the RFP grant that will be used to pay your operational costs and provide financial assistance for projects.

(3) Demonstrate that you have secured commitments of significant financial support from other funding sources, if appropriate.

(4) List the fees and charges that borrowers will be assessed.

(e) The work plan must describe the tasks and activities that will be accomplished with available resources during the grant period. It must show the work you plan to do to achieve the anticipated outcomes, goals, and objectives set out for the RFP. The plan must:

(1) Describe the work to be performed by each person.

(2) Give a schedule or timetable of work to be done.

(3) Show evidence of previous experience with the techniques to be used or their successful use by others.

(4) Outline the loan program to include the following: Specific loan purposes, a loan application process, priorities, borrower eligibility criteria, limitations, fees, interest rates, terms, and collateral requirements.

(5) Provide a marketing plan.

(6) Explain the mechanics of how you will transfer loan funds to the borrowers.

(7) Describe follow-up or continuing activities that should occur after project completion such as monitoring and reporting borrowers' accomplishments.

(8) Describe how the results will be evaluated. The evaluation criteria should be in line with the project objectives.

(9) List all personnel responsible for administering this program along with a statement of their qualifications and experience.

(f) The written justification for projected costs should explain how budget figures were determined for each category. It should indicate which costs are to be covered by grant funds and which costs will be met by your organization or other organizations. The justification should account for all expenditures discussed in the narrative. It should reflect appropriate cost-sharing contributions. The budget justification should explain the budget and accounting system proposed or in place. The administrative costs for operating the budget should be expressed as a percentage of the overall budget. The budget justification should provide specific budget figures, rounding off figures to the nearest dollar. Applicants should consult OMB Circular A–122: "Cost Principles for Non-Profit Organizations" for information about appropriate costs for each budget category.

(g) In addition to completing the standard application forms, you must submit:

1. Supplementary material that demonstrate that your organization is legally recognized under state and Federal law. Satisfactory documentation includes, but is not limited to, certificates from the Secretary of State, or copies of state statutes or laws establishing your organization. Letters from the IRS awarding tax-exempt status are not considered adequate evidence.

2. A certified list of directors and officers with their respective terms.

3. Evidence of tax exempt status from the IRS.

4. Debarment and suspension information required in accordance with 7 CFR, Part 3017, subpart 3017.335, if it applies. The section heading is "What information must I provide before entering into a covered transaction with the Department of Agriculture?" It is part of the Department of Agriculture's rules on Government-wide Debarment and Suspension.

5. All of your organization's known workplaces by including the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Workplace identification is required under the drug-free workplace requirements in accordance with 7 CFR, Part 3021, subpart 3021.230. The section heading is "How and when must I identify workplaces?" It is part of the Department of Agriculture's rules on Government-wide Requirements for Drug-Free Workplace (Financial Assistance).

6. The most recent audit of your organization.

7. The following financial statements:

i. A pro forma balance sheet at start-up and for at least three additional years; Balance sheets, income statements, and cash flow statements for the last three years.

ii. If your organization has been formed less than three years, the financial statements should be submitted for the periods from inception to the present. Projected income and cash flow statements for at least three years supported by a list of assumptions showing the basis for the projections. The projected income statement and balance sheet must include one set of projections that shows the revolving loan fund only and a separate set of projections that shows your organization's total operations.

8. Additional information to support and describe your plan for achieving the grant objectives. The information may be regarded as essential for understanding and evaluating the project and may be found in letters of support, resolutions, policies, and other relevant documents. The supplements may be presented in appendices to the proposal.

V. Application Review Information

A. Within 30 days of receiving your application, RUS will send you a letter of acknowledgment. Your application will be reviewed for completeness to determine if you included all of the items required. If your application is incomplete or ineligible, RUS will return it to you with an explanation.

B. A review team, composed of at least two members, will evaluate all applications and proposals. They will make overall recommendations based on factors such as eligibility, application completeness, and conformity to application requirements. They will score the applications based on criteria in the next section.

C. All applications that are complete and eligible will be ranked competitively based on the following scoring criteria:

Scoring criteria	Points
1. Degree of expertise and successful experience in making and servicing commercial loans, with a successful record.	
(i) At least 1 but less than 3 years	5 points.
(ii) At least 3 but less than 5 years	10 points.
(iii) At least 5 but less than 10 years	20 points.
(iv) 10 or more years	30 points.
2. Percentage of applicant contributions. Points allowed under this paragraph will be based on written evidence of the availability of funds from sources other than the proceeds of an RFP grant to pay part of the cost of a loan recipient's project. In-kind contributions will not be considered. Funds from other sources as a percentage of the RFP grant and points corresponding to such percentages are as follows:	
Less than 20 percent	Ineligible.
At least 20 percent but not more than 49 percent of the total project costs	10 points.
At least 50 percent of the total project costs	20 points.
3. Extent to which the work plan clearly articulates a well thought out comprehensive approach to accomplishing objectives; clearly defines who will be served by the project or program; clearly articulates the problem/issues to be addressed, identifies the service area to be covered by the RFP loans, and appears likely to be sustainable.	Up to 40 points.
4. Extent to which the goals and objectives are clearly defined, tied to the work plan, and are measurable	Up to 15 points.
5. Lowest ratio of projected administrative expenses to loans advanced	Up to 10 points
6. Evaluation methods for considering loan applications and making RFP loans that are specific to the program, clearly defined, measurable, and are consistent with program outcomes.	Up to 20 points.
7. Administrator's discretion, taking into consideration such factors as: Creative outreach ideas for marketing RFP loans; Amount of funds requested in relation to the amount of needs demonstrated in the proposal; Excellent utilization of a previous revolving loan fund; and, Optimizing the use of agency resources.	Up to 10 points.

VI. Award Administration Information

A. RUS will rank all qualifying applications by their final score. Applications will be selected for funding, based on the highest scores and the availability of funding for RFP grants. Each applicant will be notified in writing of the score its application receives.

B. In making its decision about your application, RUS may determine that your application is:

1. Eligible and selected for funding,
2. Eligible but offered fewer funds than requested,
3. Eligible but not selected for funding, or
4. Ineligible for the grant.

C. In accordance with 7 CFR Part 1900, subpart B, you generally have the right to appeal adverse decisions. Some adverse decisions cannot be appealed. For example, if you are denied RUS funding due to a lack of funds available for the grant program, this decision cannot be appealed. However, you may make a request to the National Appeals Division (NAD) to review the accuracy of our finding that the decision cannot be appealed. The appeal must be in writing and filed at the appropriate Regional Office, which can be found at *http://www.nad.usda.gov/offices.htm* or by calling (703) 305–1166.

D. Applicants selected for funding will complete a grant agreement, which outlines the terms and conditions of the grant award.

E. Grantees will be reimbursed as follows:

1. SF–270, "Request for Advance or Reimbursement," will be completed by the grantee and submitted to either the State or National Office.

2. Upon receipt of a properly completed SF–270, the funds will be requested through the field office terminal system. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

F. Any change in the scope of the project, budget adjustments of more than 10 percent of the total budget, or any other significant change in the project must be reported to and approved by the approval official by written amendment to the grant agreement. Any change not approved may be cause for termination of the grant.

G. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. The Grantee will provide project reports as follows:

1. SF–269, "Financial Status Report (short form)," and a project performance activity report will be required of all grantees on a quarterly basis, due 30 days after the end of each quarter.

2. A final project performance report will be required with the last SF–269 due 90 days after the end of the last quarter in which the project is completed. The final report may serve as the last quarterly report.

3. All multi-State grantees are to submit an original of each report to the National Office. Grantees serving only one State are to submit an original of each report to the State Office. The project performance reports should detail, preferably in a narrative format, activities that have transpired for the specific time period.

H. The grantee will provide an audit report or financial statements as follows:

1. Grantees expending $500,000 or more Federal funds per fiscal year will submit an audit conducted in accordance with OMB Circular A–133. The audit will be submitted within 9 months after the grantee's fiscal year. Additional audits may be required if the project period covers more than one fiscal year.

2. Grantees expending less than $500,000 will provide annual financial statements covering the grant period, consisting of the organization's statement of income and expense and balance sheet signed by an appropriate official of the organization. Financial statements will be submitted within 90 days after the grantee's fiscal year.

3. Recipient and Subrecipient Reporting.

The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR part 170, § 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

a. First Tier Sub-Awards of $25,000 or more in non-Recovery Act funds (unless they are exempt under 2 CFR Part 170) must be reported by the Recipient to *http://www.fsrs.gov* no later than the end of the month following the month the obligation was made.

b. The Total Compensation of the Recipient's Executives (5 most highly compensated executives) must be reported by the Recipient (if the Recipient meets the criteria under 2 CFR Part 170) to *http://www.ccr.gov* by the end of the month following the month in which the award was made.

c. The Total Compensation of the Subrecipient's Executives (5 most highly compensated executives) must be reported by the Subrecipient (if the Subrecipient meets the criteria under 2 CFR Part 170) to the Recipient by the end of the month following the month in which the subaward was made.

VIII. Agency Contacts

A. *Web site: http://www.usda.gov/rus/water.* The Rural Utilities Service Web site maintains up-to-date resources and contact information for the RFP.

B. *Phone:* 202–720–0499.

C. *Fax:* 202–690–0649.

D. *E-mail: joycem.taylor@wdc.usda.gov.*

E. *Main point of contact:* Joyce Taylor, Community Programs Specialist, Water and Environmental Programs, Water Programs Division, Rural Utilities Service, USDA.

Dated: April 27, 2011.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2011–12817 Filed 5–23–11; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[4/27/2011 through 5/12/2011]

Firm Name	Address	Date accepted for investigation	Products
A.W. Enterprises, Inc	6543 South Laramie Avenue, Bedford Park, IL 60638.	28–Apr–11	The firm designs and manufactures leather and nylon cargo cases for the communication industry.
Ace Wire Spring & Form Company, Inc.	1105 Thompson Avenue, McKees Rocks, PA 15136.	28–Apr–11	The firm manufactures custom springs and wire forms.
Chicago Booth Manufacturing, Inc.	5000 W. Roosevelt Road, Chicago, IL 60644.	12–May–11	The firm manufactures booths, banquettes, tabletops, chairs, barstools and seats with wooden frames.
ClayTex Trophies, Inc	241 Myers Road, Henrietta, TX 76365.	11–May–11	The firm manufactures original sculpture for trophies and awards.
Newport Plastics, LLC	1525 E. Edinger Avenue, Santa Ana, CA 92705.	04–May–11	The firm manufactures a wide range of plastic goods for medical and government use using custom mold injection.
Quality Casting and Aluminum Products (QCAP).	324 Hill Road, Franklin, NH 03235.	11–May–11	The firm manufactures products of aluminum, bronze, and zinc alloys using high-quality sand casting.
Sauder Woodworking Company.	502 Middle Street, P.O. Box 156, Archbold, OH 43502–0156.	11–May–11	The firm manufactures ready-to-assemble and finished furniture made of wood.
Sound Propeller Services, Inc	7916 8th Avenue S., Seattle, WA 98108.	11–May–11	The firm manufactures marine propellers, propeller shafting and related accessories made of either stainless steel or a special bronze alloy.
Triton Industries, Inc	1020 N Kolmar Avenue, Chicago, IL 60651.	10–May–11	The firm manufactures custom metal boxes, progressive die stampings, welded structures and machined metal parts such as enclosures, cabinets, rack mount chassis, food service parts, heat sinks and brackets.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: May 17, 2011.

Bryan Borlik,

Director.

[FR Doc. 2011–12689 Filed 5–23–11; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 34–2011]

Foreign-Trade Zone 161—Sedgwick County, KS; Application for Reorganization/Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Board of County Commissioners of Sedgwick County, grantee of FTZ 161, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170–1173, 01/12/09 (correction 74 FR 3987, 01/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 17, 2011.

FTZ 161 was approved by the Board on September 8, 1989 (Board Order 438, 54 FR 39558, 09/27/89), and consists of the following sites: *Site 1* (279 acres)—Garvey Industrial Park, 5755 South Hoover Road, Wichita; and *Site 1A* (1.15 acres)—United Warehouse, 901 East 45th Street North, Wichita.

The grantee's proposed service area under the ASF would be Butler, Harvey, McPherson, Reno, Saline, Sedgwick and Sumner Counties, Kansas. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Wichita Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project under the ASF as follows: Modify Site 1 by removing 119 acres due to changed circumstances (new acreage—160 acres); renumber Site 1A to Site 2; and Sites 1 and 2 would become "magnet" sites. The ASF allows for the possible exemption of one magnet site from the "sunset" time limits that generally apply to sites under the ASF, and the applicant proposes that Site 2 be so exempted. *The applicant is also requesting approval of the following initial "usage-driven" site: Proposed Site 3* (108.6 acres)—Siemens Energy, *Inc.,* Wind Turbine Nacelle Assembly Facility, 1000 Commerce Street, Hutchinson (Reno County). Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 161's authorized subzones.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the

address below. The closing period for their receipt is July 25, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 8, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: May 18, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–12790 Filed 5–23–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 24, 2011.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* 202–482–2243.

Background

This matter arose from a challenge to the results in the Department of Commerce's ("Department") *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China,* 69 FR 70997 (December 8, 2004) ("*Final Determination*") and *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China,* 70 FR 5149 (February 1, 2005) ("*Amended Final Determination*"). Following publication of the *Amended Final Determination,* respondents [1] Allied Pacific and Yelin, filed a lawsuit with the Court of International Trade ("CIT" or the "Court") challenging the Department's *Final Determination and Amended Final Determination.* At issue in the litigation were the Department's surrogate values for two inputs: raw, head-on, shell-on shrimp and hours of labor used in the production of the subject merchandise.

After two court ordered remands, the Department issued its second final results of redetermination on May 21, 2009. See *Allied Pacific Food (Dalian) Co. Ltd.* v. *United States,* 716 F. Supp. 2d 1339 (Ct. Int'l Trade 2010). In its second remand redetermination, the Department calculated new surrogate values for shrimp using ranged data from the Indian shrimp producer Devi Seafoods, Ltd. ("Devi") and adopted a new surrogate labor rate. *Id.* at 1342. Using these revised values, the Department determined revised antidumping duty margins of 5.07% ad-valorem for Allied Pacific and 8.45% ad-valorem for Yelin. *Id.*

No party appealed the CIT's decision. As there is now a final and conclusive court decision in this case, we are amending our final determination.

Amended Final Determination

As the litigation in this case has concluded, the Department is amending the *Final Determination* to reflect the results of our remand determination. *The revised dumping margins for the amended final determination are as follows:*

Manufacturer/exporter	Margin
Allied Pacific	5.07%
Yelin	8.45%

The PRC-wide rate continues to be 112.81 percent as determined in the Department's *Amended Final Determination.*

Both Allied Pacific and Yelin have received new cash deposit rates in subsequent reviews, so the rates listed above will not be applied as cash deposit rates for either company. Additionally, both Allied Pacific and Yelin obtained preliminary injunctions enjoining liquidation of all entries of subject merchandise during subsequent administrative review periods. Now that the litigation to which these injunctions pertained has been completed, the Department intends to issue instructions to U.S. Customs and Border Protection ("CBP") fifteen days after publication of this notice notifying CBP of the lifting of these injunctions and instructing CBP to liquidate all appropriate entries, not otherwise enjoined, at the applicable rates for each review period.

This notice is published in accordance with sections 735(d), 777(i), and 516A(a)(B) of the Tariff Act of 1930, as amended.

Dated: May 17, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–12793 Filed 5–23–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] Allied Pacific Food (Dalian) Co., Ltd., Allied Pacific (H.K.) Co., Ltd., King Royal Investments, Ltd., Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., and Allied Pacific Aquatic Products (Zhongshan) Co., Ltd. (collectively "Allied Pacific") and Yelin Enterprise Co. Hong Kong ("Yelin") are Chinese producers of subject shrimp that were respondents in the antidumping duty investigation.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp From the People's Republic of China: Extension of Final Results of the Fifth Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is extending the time limit for the final results of the fifth administrative review of certain frozen warmwater shrimp from the People's Republic of China ("PRC"). The review covers the period February 1, 2009, through January 31, 2010.

DATES: *Effective Date:* May 24, 2011.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–2593.

Background

On April 9, 2010, the Department published in the **Federal Register** a notice of initiation of the fifth administrative review of the antidumping duty order on certain frozen warmwater shrimp from the PRC. *See Notice of Initiation of Administrative Reviews and Requests for Revocation in Part of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam and the People's Republic of China,* 75 FR 18154 (April 9, 2010). On February 14, 2011,

the Department published the preliminary results of the review. *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of the Fifth Antidumping Duty Administrative Review,* 76 FR 8338 (February 14, 2010).

Statutory Time Limits

In antidumping duty administrative reviews, section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a final determination in an administrative review of an antidumping duty order within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 120 day period to 180 days after the preliminary results if it determines it is not practicable to complete the review within the foregoing time period.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the final results of the fifth administrative review of certain frozen warmwater shrimp from the PRC within the 120 day time limit because the Department requires additional time to analyze case and rebuttal briefs.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the final results of this review, which is currently due on June 14, 2011, by 60 days to 180 days after the date on which the preliminary results were published. Therefore, the final results are now due no later than August 13, 2011.[1]

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: May 18, 2011.

Christian Marsh,

Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–12799 Filed 5–23–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] Because August 13, 2011, falls on a Saturday, the actual date for the final results will be the next business day, August 15, 2011. *See Notice of Clarification: Application of* "*Next Business Day*" *Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 1, 2009.

SUMMARY: On April 21, 2011, the Department of Commerce ("Department") published a notice of initiation and the preliminary results of the changed circumstances review with intent to revoke, in part, the antidumping duty order [1] on certain steel nails from the People's Republic of China ("PRC") in the **Federal Register**.[2] The Department is now revoking the *Order,* in part, with regard to four specific types of steel nails.

FOR FURTHER INFORMATION CONTACT: Alexis Polovina, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3927.

Background

On February 11, 2011, Mid Continent Nail Corporation ("Petitioner") submitted a request for a changed circumstances review to revoke, in part, *Order* with respect to four specific types of steel nails.

Between February 22, 2011, and March 24, 2011, the Department received comments on behalf of Itochu Building Products ("IBP"), National Nail Corp. ("National Nail"), and United Sources Inc. ("United Sources"), supporting Petitioner's request for partial revocation of the *Order,* requesting the Department select the date of the preliminary determination of the original investigation as the effective date of the revocation, and requesting that the Department conduct an expedited review. On March 4, 2011, Department officials spoke with counsel representing Petitioner to clarify an inconsistency regarding the effective date identified in Petitioner's request.[3]

On March 8, 2011, counsel representing IBP met with Department officials to discuss the effective date of the proposed revocation, in part.[4]

On April 21, 2011, the Department published a notice of *Initiation and Preliminary Results* of changed circumstances review with intent to revoke, in part, the *Order* with regard to four specific types of steel nails. We invited parties to submit comments for consideration in the Department's Final Results. None were received.

Scope of the Changed Circumstances Review

The merchandise covered by this changed circumstances review are four specific types of steel nails from the PRC that meet the following criteria:

(1) Non-collated (*i.e.,* hand-driven or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500″ to 8″, inclusive; and an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual washer or cap diameter of 0.900″ to 1.10″, inclusive.

(2) Non-collated (*i.e.,* hand-driven or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 4″, inclusive; an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive.

(3) Wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 1.75″, inclusive; an actual shank diameter of 0.116″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive.

(4) Non-collated (*i.e.,* hand-driven or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75″ to 3″, inclusive; an actual shank diameter of 0.131″ to 0.152″, inclusive; and an actual head diameter of 0.450″ to 0.813″, inclusive.

In accordance with sections 751(b), 751(d), and 782(h) of the Tariff Act of 1930, as amended ("Act") and 19 CFR 351.216, the Department determines that there is a reasonable basis to believe that changed circumstances exist sufficient to warrant partial revocation of the *Order.* Therefore, the Department is revoking the *Order,* in part, with regard to the products described above. Effective August 1, 2009, the amended scope of the *Order* will read as follows:

[1] *See Notice of Antidumping Duty Order: Certain Steel Nails From the People's Republic of China,* 73 FR 44961 (August 1, 2008) ("*Order*").

[2] *See Certain Steel Nails from the People's Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 76 FR 22369 (April 21, 2011) ("*Initiation and Preliminary Results*").

[3] *See* Memorandum to the File, From Alexis Polovina, Case Analyst, Regarding Changed Circumstances Review ("CCR") of Certain Steel Nails from the People's Republic of China ("PRC"): Phone Call with Petitioner, dated March 4, 2011.

[4] *See* Memorandum to the File, Alex Villanueva, Program Manager, Office 9, Import Administration, From Timothy Lord, Analyst, Office 9, Import Administration, Regarding Certain Steel Nails from the People's Republic of China: Meeting with Outside Party, dated March 9, 2011.

Scope of the Order

The merchandise covered by this proceeding includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this proceeding are currently classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7317.00.55, 7317.00.65 and 7317.00.75.

Excluded from the scope are steel roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Also excluded from the scope are the following steel nails: (1) Non-collated (*i.e.,* hand-driven or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500″ to 8″, inclusive; and an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual washer or cap diameter of 0.900″ to 1.10″, inclusive; (2) Non-collated (*i.e.,* hand-driven or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 4″, inclusive; an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive; (3) Wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 1.75″, inclusive; an actual shank diameter of 0.116″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive; and (4) Non-collated (*i.e.,* hand-driven or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75″ to 3″, inclusive; an actual shank diameter of 0.131″ to 0.152″, inclusive; and an actual head diameter of 0.450″ to 0.813″, inclusive.

Also excluded from the scope of this proceeding are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this proceeding are fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30. Also excluded from the scope of this proceeding are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

Also excluded from the scope of this proceeding are certain brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. Also excluded from the scope of this proceeding are fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Instructions to Customs

In accordance with 19 CFR 351.222(g)(4), the Department will instruct U.S. Customs and Border Protection ("CBP") to liquidate, without regard to applicable antidumping duties, all unliquidated entries of nails that meet the above-noted specifications, and to refund any estimated antidumping duties collected on such merchandise entered, or withdrawn from warehouse, for consumption on or after August 1, 2009,[5] the day after the most recent period for which an administrative review was completed. The Department will further instruct CBP to refund with interest any estimated duties collected with respect to unliquidated entries of nails from the PRC entered, or withdrawn from warehouse, for consumption on or after August 1, 2009, in accordance with section 778 of the Act.

The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. 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.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act, and 19 CFR 351.216, 351.221, and 351.222.

Dated: May 17, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–12800 Filed 5–23–11; 8:45 am]

BILLING CODE 3510–DS–P

[5] The Department's recent practice has been to select the date after the most recent period for which a review was completed or issued assessment instructions as the effective date. *See e.g., Notice of the Final Results of Changed Circumstances Review and Revocation of the Antidumping Order: Coumarin From the People's Republic of China,* 69 FR 24122 (May 3, 2004) and *Notice of Final Results of Changed Circumstances Review and Revocation of the Antidumping Duty Order: Bulk Aspirin From the People's Republic of China,* 69 FR 77726 (Dec. 28, 2004).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–821]

Polyethylene Retail Carrier Bags From Thailand: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from Thailand. The review covers 11

companies. The period of review (POR) is August 1, 2009, through July 31, 2010. We have preliminarily determined that sales have been made below normal value by the companies subject to this review.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this review are requested to submit with each argument (1) A statement of the issue and (2) a brief summary of the argument.

DATES: *Effective Date:* May 24, 2011.

FOR FURTHER INFORMATION: Bryan Hansen or Dustin Ross, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3683 or (202) 482–0747, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2004, the Department published in the **Federal Register** the antidumping duty order on PRCBs from Thailand. See *Antidumping Duty Order: Polyethylene Retail Carrier Bags From Thailand,* 69 FR 48204 (August 9, 2004). On September 29, 2010, we published a notice of initiation of an administrative review of 11 companies. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 60076 (September 29, 2010).[1] Since initiation of the review, we selected Landblue (Thailand) Co., Ltd. (Landblue), and Thai Plastic Bags Industries Co., Ltd. (TPBI), for individual examination. See the "Selection of Respondents" section below. The order on PRCBs from Thailand was revoked in part with respect to merchandise produced and exported by TPBI, effective July 28, 2010.[2] Therefore, the POR for TPBI is August 1, 2009, through July 27, 2010.

The POR is August 1, 2009, through July 31, 2010. We are conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the antidumping duty order is PRCBs, which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.,* grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) Polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.,* garbage bags, lawn bags, trash-can liners.

As a result of changes to the Harmonized Tariff Schedule of the United States (HTSUS), imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the HTSUS. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Selection of Respondents

Due to the large number of companies for which a request for a review had been made and the resulting administrative burden to examine each company, the Department exercised its authority to limit the number of respondents selected for examination. Where it is not practicable to examine all known exporters/producers of subject merchandise because of the large number of such companies, section 777A(c)(2) of the Act allows the Department to limit its examination to either a sample of exporters, producers, or types of products that is statistically valid, based on the information available at the time of selection, or exporters and producers accounting for the largest volume of subject merchandise from the exporting country that can be reasonably examined.

Accordingly, based on our analysis of U.S. Customs and Border Protection (CBP) import data on the record of this review (see letters from Laurie Parkhill to the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corp., and to TPBI dated October 6, 2010, and to Landblue dated October 21, 2010) and our available resources, we selected Landblue and TPBI for individual examination. See Memorandum to Laurie Parkhill regarding respondent selection dated October 29, 2010.

Non-Selected Respondents

The Department normally calculates a weighted-average margin of the examined companies and then applies that margin to companies not examined individually. See section 735(c)(5)(A) of the Act (providing for this analysis in calculating the "all others" rate in investigations). We cannot calculate such a rate in this case, however, because with only two companies being individually examined such a calculation would reveal business-proprietary information impermissibly to the respondents we have selected for individual examination.

In such situations, it is our normal practice to use one of two alternative methodologies. We might calculate a weighted-average antidumping margin using the publicly available ranged U.S. sales values and antidumping duty margins of the two selected respondents or we might calculate a simple average of the margins we have determined for the two companies we have selected for individual examination. See *Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1. The methodology we choose depends on which result is closer to the actual weighted-average margin we can calculate using the information in the margin calculations of the companies we selected for individual examination. See *id.*

[1] *We stated that the review covers the following companies:* First Pack Co. Ltd., Hi-Pack Company, Ltd., ITW Minigrip (Thailand) Co. Ltd., K International Packaging Co., Ltd., Landblue (Thailand) Co., Ltd., Praise Home Industry, Co. Ltd., Siam Flexible Industries Co., Ltd., Thai Jirun Co., Ltd., Thai Plastic Bags Industries Co., Ltd., Trinity Pac Co. Ltd., U. Yong Industry Co., Ltd. *Id.,* 75 FR at 60078. The Department has determined previously that TPBI, APEC Film Ltd., and Winner's Pack Co., Ltd., comprise the Thai Plastic Bags Group. See *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Thailand,* 69 FR 34122, 34123 (June 18, 2004).

[2] See *Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Polyethylene Retail Carrier Bags From Thailand,* 75 FR 48940 (August 12, 2010) (*TPBI Revocation*).

In this review, we have preliminarily concluded that the weighted-average margin we calculated using Landblue's and TPBI's ranged U.S. sales values is closer to the actual weighted-average margin of these companies than the margin we calculated using the simple average. Accordingly, we have applied, for these preliminary results, the rate of 30.22 percent to the firms not individually examined in this review using the weighted-average margin we determined using public ranged U.S. sales values Landblue and TPBI submitted for the record of the review. See the Memorandum to the File concerning Margin Calculation for Respondents Not Selected for Individual Examination dated concurrently with this notice for an explanation of our calculations.

No-Shipments Respondents

On October 29, 2010, Hi-Pack Company, Ltd. (Hi-Pack), and on December 10, 2010, ITW Minigrip (Thailand) Co. Ltd. (ITW Minigrip) submitted letters indicating that they made no sales to the United States during the POR. We have not received any comments on the submissions from Hi-Pack or ITW Minigrip. We confirmed Hi-Pack's and ITW Minigrip's claims of no shipments by issuing "No-Shipments Inquiry" messages to CBP on November 10, 2010, and December 28, 2010, respectively.

With regard to Hi-Pack's and ITW Minigrip's claims of no shipments, our practice since implementation of the 1997 regulations concerning no-shipments respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR. See *Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27393 (May 19, 1997), and *Oil Country Tubular Goods From Japan: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 95 (January 3, 2006). As a result, in such circumstances, we have normally instructed CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, "automatic assessment" clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*May 2003 Clarification*).

Based on the assertions by Hi-Pack and ITW Minigrip of no shipments and no indication from CBP that there are suspended entries of subject merchandise from these firms, we preliminarily determine that they had no sales to the United States during the POR.

Because "as entered" liquidation instructions do not alleviate the concerns which the *May 2003 Clarification* was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by Hi-Pack and ITW Minigrip at the all-others rate should we continue to find at the time of our final results that these firms had no shipments of subject merchandise from Thailand. See *Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26933 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010). See also *Certain Frozen Warmwater Shrimp from India: Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 77610, 77612 (December 19, 2008). In addition, the Department finds that it is more consistent with the *May 2003 Clarification* not to rescind the review in part in these circumstances but, rather, to complete the review with respect to Hi-Pack and ITW Minigrip and issue appropriate instructions to CBP based on the final results of the review. See the "Assessment Rates" section of this notice below.

Export Price

For the price to the United States for Landblue and TPBI, we used export price (EP) as defined in section 772(a) of the Act. We calculated EP based on the packed free-on-board, delivered, or ex-works price to unaffiliated purchasers in, or for exportation to, the United States. See section 772(c) of the Act. We made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(c)(1)(B) of the Act, we made adjustments for duty drawback under Section 19 bis of the Thailand Customs Act (No. 9) B.E. 2482 claimed by TPBI. For a detailed explanation of our calculations, see the company-specific analysis memoranda dated concurrently with this notice.

Comparison Market

Based on a comparison of the aggregate quantity of home-market and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined that the quantity of foreign like product sold by TPBI in Thailand was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. TPBI's quantity of sales in Thailand was greater than five percent of its quantity of sales to the U.S. market. See section 773(a)(1) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the prices at which the foreign like product was first sold for consumption in Thailand in the usual commercial quantities, in the ordinary course of trade, and at the same level of trade as TPBI's U.S. sales.

We determined that the quantity of foreign like product sold by Landblue in Thailand and to third countries was insufficient to permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a) of the Act. Therefore, for Landblue, we used constructed value as the basis of normal value in accordance with section 773(e) of the Act.

Cost of Production

In accordance with section 773(b) of the Act, we disregarded the below-cost sales of TPBI in the most recent administrative review of this company completed before the initiation of this review. See *Polyethylene Retail Carrier Bags From Thailand: Final Results of Antidumping Duty Administrative Review,* 74 FR 65751 (December 11, 2009). Therefore, we have reasonable grounds to believe or suspect that TPBI's sales of the foreign like product under consideration for the determination of normal value in this review may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Accordingly, pursuant to section 773(b)(1) of the Act, we have conducted a COP analysis of TPBI's sales in Thailand in this review.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, the selling, general, and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the home-market sales

and COP information TPBI provided in its questionnaire responses.

We relied on the COP data submitted by TPBI, including its allocation of costs for ink, plate, and solvents, *except as follows:*

1. With respect to the allocation of direct labor, variable overhead, and fixed overhead costs, we have preliminarily determined that the methodology reported by TPBI unreasonably distorts the cost of manufacture for the subject merchandise and the foreign like product. This reported methodology is not only inconsistent with the methodology applied by TPBI in its books and records, it also results in a large variability in costs that have nothing to do with physical differences in the merchandise. Accordingly, pursuant to section 776(a) of the Act, as facts otherwise available, we have weight-averaged TPBI's actual reported costs on a per-unit basis. Where TPBI's methodology results in significant differences in costs between physically similar merchandise, the Department's methodology allocates direct labor and overhead costs evenly across all of the merchandise TPBI produced. In this manner, the Department is able to diminish the possibility of under- or over-valuation of TPBI's costs. See Statement of Administrative Action, URAA, H. Doc. 316, Vol. 1, 103rd Cong. (1994), at 834–5 (stating that, if the Department determines that costs reported by a respondent "shifted away costs from the production of the subject merchandise, or the foreign like product," the Department has the authority to "adjust costs appropriately to ensure that they (the costs) are not artificially reduced").

2. We adjusted TPBI's reported general and administrative (G&A) expense to remove an offset claimed by TPBI for revenue associated with the Government of Thailand's Blue Corner Rebate program because its claimed refunds relate to the export of merchandise and not the cost to produce its products. In addition, we included bank charges, office salaries, and claims expenses in the G&A expense rate calculation as these costs appear to relate to the general operations of the company.

For additional details on these adjustments, see memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Thai Plastic Bags Industries Co., Ltd." dated concurrently with this notice.

Results of Cost Test and Cost-Recovery Test

After calculating the COP in accordance with section 773(b)(1) of the Act, we tested whether home-market sales of the foreign like product for TPBI were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. See section 773(b)(2) of the Act. We compared model-specific COPs to the reported home-market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of TPBI's sales of a given product were made at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of TPBI's sales of a given product during the POR were made at prices less than the COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act.

Further, in accordance with section 773(b)(2)(D) of the Act, we compared prices to weighted-average per-unit COPs for the POR and determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time. We examined the cost data and determined that our quarterly cost methodology is not warranted and, therefore, we have applied our standard methodology of using annual costs based on the data TPBI reported, adjusted as described in the "Cost of Production" section above. Because we are applying our standard annual-average cost test in these preliminary results, we have also applied our standard cost-recovery test with no adjustments. Based on both of these tests, we disregarded certain sales made by TPBI in the home market which were made at below-cost prices.

Model-Matching Methodology

With respect to TPBI, in making our comparisons of U.S. sales with sales of the foreign like product in the home market, we used the following methodology. If an identical comparison-market model with identical physical characteristics as listed below was reported, we made comparisons to weighted-average home-market prices that were based on all sales which passed the COP test of the identical product during a contemporaneous month. If there were no contemporaneous sales of an identical model, we identified the most similar home-market model. To determine the most similar model, we matched the foreign like product based on physical characteristics reported by the respondent in the following order of importance: (1) Quality, (2) bag type, (3) length, (4) width, (5) gusset, (6) thickness, (7) percentage of high-density polyethylene resin, (8) percentage of low-density polyethylene resin, (9) percentage of low linear-density polyethylene resin, (10) percentage of color concentrate, (11) percentage of ink coverage, (12) number of ink colors, and (13) number of sides printed.

Normal Value

With respect to TPBI, we based home-market prices on the packed, ex-factory, or delivered prices to unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, adjusted as described in the "Cost of Production" section above, and for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made circumstance-of-sale adjustments by deducting home-market direct selling expenses from and adding U.S. direct selling expenses to normal value. U.S. direct selling expenses included bank charges incurred on payments received on export sales.

TPBI has stated that its 2010 audited financial statements will not be available until May 2011. We have requested that TPBI provide copies of these statements within seven days of their completion. Therefore, we are using TPBI's 2009 financial statements for purposes of these preliminary results and intend to use its 2010 statements for the final results of review.

In accordance with section 773(a)(1)(B)(i) of the Act, we based normal value at the same level of trade as the EP sales. See the "Level of Trade" section below.

Constructed Value

In accordance with section 773(a)(4) of the Act, we used constructed value for TPBI where we did not find an identical or similar item sold in the home market or when the identical or similar item was disregarded because it was below cost. We calculated

constructed value in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, adjusted for TPBI as described in the "Cost of Production" section above. We also included SG&A expenses, U.S. packing expenses, and profit in the calculation of constructed value. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by TPBI in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market.

In accordance with section 773(a)(4) of the Act, we used constructed value for Landlbue as the basis for normal value because Landblue's sales of foreign like product in its home market and to third countries were less than five percent of the volume of subject merchandise sales to the United States. We calculated constructed value in accordance with section 773(e) of the Act. We included Landblue's reported cost of materials and fabrication. We also added Landblue's G&A expenses, revised to include certain expense items Landblue had omitted. Finally, in accordance with section 773(e)(2)(B)(iii) of the Act, because Landblue had no sales in the home market or to any third countries, we added selling expenses and profit based on publically available financial statements for the fiscal year most contemporaneous with the POR of a company in Thailand, Thantawan Industry Public Company Limited (Thantawan). Thantawan produces products in the same general category of merchandise as PRCBs.

For a detailed explanation of the calculation of constructed value for TPBI and Landblue, see the respective analysis memoranda for Landblue and TPBI dated concurrently with this notice.

Level of Trade

To the extent practicable, for TPBI we determined normal value for sales at the same level of trade as the U.S. sales. The level of trade for normal value is that of the starting-price sales in the home market. When normal value is based on constructed value, the level of trade is that of the sales from which we derived SG&A expense and profit.

To determine whether home-market sales for TPBI were at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. This analysis revealed that there were not any significant differences in selling functions between different channels of distribution or customer type in either the home or U.S. markets. Therefore, we determined that TPBI made all home-market sales at one level of trade. Moreover, we determined that all home-market sales by TPBI were made at the same level of trade as its U.S. sales. For a more detailed discussion, see the analysis memo for TPBI dated concurrently with this notice. Accordingly, we compared TPBI's U.S. sales to its home-market sales, all of which were made at the same level of trade.

Because Landblue had no viable home or third-country market and because we used another company's financial statement to calculate profit and selling expenses for constructed value, no level-of-trade analysis is necessary.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted-average dumping margins on PRCBs from Thailand exist for the period August 1, 2009, through July 31, 2010 (through July 27, 2010, for TPBI):

Company	Margin percent
First Pack Co. Ltd.	30.22
Hi-Pack Company, Ltd.	([3])
ITW Minigrip (Thailand) Co. Ltd.	([4])
K International Packaging Co., Ltd.	30.22
Landblue (Thailand) Co., Ltd.	27.82
Praise Home Industry, Co. Ltd.	30.22
Siam Flexible Industries Co., Ltd.	30.22
Thai Jirun Co., Ltd.	30.22
Thai Plastic Bags Industries Co., Ltd.	35.79
Trinity Pac Co. Ltd.	30.22
U. Yong Industry Co., Ltd.	30.22

Disclosure and Public Comment

We will disclose the calculations used in our analysis to interested parties to this review within five days of the date of publication of this notice. See 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the date of publication of this notice. See 19 CFR 351.310. Interested parties who wish to request a hearing or to participate in a hearing if a hearing is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. *Requests should contain the following information:* (1) The party's name, address, and telephone number; (2) the number of participants; (3) a list of issues to be discussed. See 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the case briefs. See 19 CFR 351.310(c). Case briefs from interested parties may be submitted within 30 days of the date of publication of this notice. See 19 CFR 351.309(c)(1)(ii). Rebuttal briefs from interested parties, limited to the issues raised in the case briefs, may be submitted not later than five days after the time limit for filing the case briefs or comments. See 19 CFR 351.309(d)(1). If requested, any hearing will be held two days after the scheduled date for submission of rebuttal briefs. See 19 CFR 351.310(d). Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument a statement of the issue, a summary of the arguments not exceeding five pages, and a table of statutes, regulations, and cases cited. See 19 CFR 351.309(c)(2). The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice. See section 751(a)(3)(A) of the Act.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated for TPBI and Landblue an importer (or customer)-specific assessment value for merchandise subject to this review by dividing the total dumping margin (calculated as the difference between normal value and EP) for each importer or customer by the total kilograms the exporter sold to that importer or customer. We will instruct CBP to assess the resulting per-kilogram amount against each kilogram of merchandise in each of that importer's/customer's entries during the POR.

As discussed above, the Department clarified its "automatic assessment" regulation on May 6, 2003. This clarification applies to entries of subject merchandise during the POR produced by TPBI and Landblue for which they did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *May 2003 Clarification.*

[3] No shipment or sales subject to this review. This firm has no individual rate from a previous segment of this proceeding.

[4] No shipment or sales subject to this review. This firm has no individual rate from a previous segment of this proceeding.

For the companies which were not selected for individual examination, we will instruct CBP to apply the rates listed above to all entries of subject merchandise produced and/or exported by such firms.

Consistent with the *May 2003 Clarification,* for Hi-Pack and ITW Minigrip, which claimed they had no shipments of subject merchandise to the United States, we will instruct CBP to liquidate any applicable entries of subject merchandise at the all-others rate.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of review.

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of PRCBs from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) The cash-deposit rates for the reviewed companies [5] will be the rates established in the final results of review; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash-deposit rate will be 4.69 percent (see *TPBI Revocation*). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importer

This notice also serves as a preliminary 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

[5] The prospective cash-deposit requirement will not apply to merchandise produced and exported by TPBI. See *TPBI Revocation.*

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 18, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–12804 Filed 5–23–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA448

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold meetings of its 107th Scientific and Statistical Committee (SSC) and its 151st Council meeting to take actions on fishery management issues in the Western Pacific Region.

DATES: The SSC will meet on June 13–15, 2011, between 8:30 a.m. and 5 p.m.; the Council's Executive and Budget Standing Committee will meet on June 15, 2011, between 3 p.m. and 5 p.m.; the 151st Council meeting will meet on June 16–18, 2011, between 9 a.m. and 6 p.m. All meetings will be held in Honolulu, HI. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The 107th SSC meeting, Council Executive and Budget Standing Committee and 151st Council meeting will be held at the Waikiki Beach Marriott Resort & Spa, 2552 Kalakaua Avenue, Honolulu, HI 96815–3699; telephone: (808) 922 6611.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: In addition to the agenda items listed here, the SSC and Council will hear recommendations from Council advisory groups. Public comment periods will be provided throughout the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for 107th SSC Meeting

8:30 a.m.–5 p.m., Monday, June 13, 2011

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 106th SSC Meeting Recommendations
4. Report From the Pacific Islands Fisheries Science Center Director
5. Program Planning
   - A. Non-Commercial Data Collection Options
   - B. Public Comment
   - C. SSC Discussion and Recommendations
6. Insular Fisheries
   - A. Annual Catch Limits (Action Items)
   - 1. All Islands Acceptable Biological Catch (ABC) Analysis for Coral Reef Fin-fish Fisheries Annual Catch Limits (ACLs)
   - a. Hawaii
   - b. American Samoa
   - c. Mariana Archipelago
   - 2. Hawaii
   - a. Kona Crab
   - b. Deepwater Shrimp
   - c. Lobster
   - d. Hawaii Akule/Opelu Catch History and Potential ABC
   - e. Precious Coral ABCs
   - f. Mollusks
   - g. Report on ACL Working Groups on MHI Bottomfish
   - i. P-star Report
   - ii. Socio-Economic Ecological and Management Uncertainty (SEEM) Report
   - 3. Mariana Archipelago
   - a. Lobster
   - b. Deepwater Shrimp
   - c. Mollusks
   - 4. American Samoa
   - a. Spiny Lobster
   - b. Mollusks
   - B. Bottomfish (Essential Fish Habitat/Habitat Areas of Particular Concern (EFH/HAPC))
   - a. Western Pacific Stock Assessment Review (WPSAR)
   - b. Options
   - C. Plan Team Report
   - D. Advisory Panel Report
   - E. Regional Ecosystem Advisory Committee (REAC) Report
   - F. Public Comment
   - G. SSC Discussion and Recommendations

8:30 a.m.–5 p.m., Tuesday, June 14, 2011

7. Pelagic Fisheries
   - A. Action Items
   - 1. Options Paper on Shallow-Set Longline Fishery for Swordfish
   - 2. Overfishing of Pacific Bluefin

3. ABC for Hawaii Squid Fisheries
B. Western and Central Pacific Fisheries Commission (WCPFC) Conservation and Management Measure for Bigeye
1. Catch Limits for All Fisheries
2. Trading Catch (Within and Between Regional Fishery Management Organizations (RFMOs))
3. Fish Aggregating Device (FAD) Management
C. Economic Impacts of 2010 Western and Central Pacific Ocean (WCPO) Bigeye Closure
D. American Samoa and Hawaii Longline Quarterly Reports
E. International Fisheries Meetings
1. Inter-American Tropical Tuna Commission (IATTC) Science Committee
2. IATTC Technical Meeting on Sharks
3. IATTC General Advisory Committee (GAC) & Science Advisory Subcommittee (SAS) Meeting
F. Pelagic Plan Team Report
G. Public Comment
H. SSC Discussion and Recommendations

8:30 a.m.–5 p.m., Wednesday, June 15, 2011

9. Other Meetings & Workshops
10. Other Business
A. 108th SSC Meeting
11. Summary of Recommendations to the Council

151st Council Meeting

3 p.m.–5 p.m., Wednesday, June 15, 2011

Executive and Budget Standing Committee

9 a.m.–6 p.m., Thursday, June 16, 2011

1. Introductions
2. Approval of the 151st Council Meeting Agenda
3. Approval of the 150th Council Meeting Minutes
4. Executive Director's Report
Guest Speaker: To be announced
5. Agency Reports
A. National Marine Fisheries Service
1. Pacific Islands Regional Office
2. Pacific Islands Fisheries Science Center
B. NOAA Regional Counsel
C. U.S. Fish and Wildlife Service
D. Enforcement
1. U.S. Coast Guard
2. NMFS Office for Law Enforcement
3. NOAA General Counsel for Enforcement and Litigation
E. NOAA Coral Reef Conservation Program
F. Public Comment
G. Council Discussion and Action
6. American Samoa Archipelago
A. Motu Lipoti
B. Fono Report
C. Enforcement Issues
D. ACLs for Mollusks and Lobsters (Action item)
E. Marine Conservation Plan
F. Community Fisheries Development
G. Community Activities and Issues
H. Education and Outreach Initiatives
I. SSC Recommendations
J. Public Comment
K. Council Discussion and Action
7. Mariana Archipelago
A. Arongo Flaeey
B. Isla Informe
C. Legislative Report
D. Enforcement Issues
E. ACLs for Lobster, Shrimp, Mollusks (Action item)
F. Report on Commonwealth Submerged Lands Legislation
G. Community Activities and Issues
1. Community Monitoring Activities
2. Shoreline Access Restrictions in Relation to Fishermen Deaths
H. Update on Military Activities
I. Education and Outreach Initiatives
J. Marine Conservation Plans
1. Commonwealth of the Northern Mariana Islands (CNMI) (Expires August 2011) (Action item)
2. Guam (Expired) (Action item)
K. SSC Recommendations
L. Public Comment
M. Council Discussion and Action
8. Protected Species
A. Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) Issues
B. IUCN Hawaii Green Turtle Assessment
C. NMFS/MCBI Meeting on Seabird and Pelagic Fish
D. Report on the International Sea Turtle Symposium
E. STAC Recommendations
F. SSC Recommendations
G. Public Comment
H. Council Discussion and Action
9. Public Comment on Non-Agenda Items

9 a.m.–6 p.m., Friday, June 17, 2011

9 a.m.–1 p.m.

10. Hawaii Archipelago
A. Moku Pepa
B. Legislative Report
C. Enforcement Issues
D. Annual Catch Limits (Action Items)
1. Main Hawaiian Islands Bottomfish
a. ACL Working Group Reports
i. P-star Level of Risk
ii. SEEM—Social, Economic, Ecological and Management Uncertainty
iii. ACL Specifications for MHI Deep 7 Bottomfish
2. Report on Kona Crab Fishery
3. Report on Heterocarpus Sp. Catch History
4. Hawaii Akule/Opelu Time Series
5. Precious Coral ACLs
E. Bottomfish Essential Fish Habitat and Habitat of Particular Concern (EFH/HAPC) (Action Item)
1. WPSAR Report
2. Options for Hawaii Bottomfish Management Unit Species EFH/HAPC
3. Status Report on American Samoa, Guam, CNMI and Pacific Remote Island Area Bottomfish EFH/HAPC Review
F. Sustainable Fisheries Fund Marine Conservation Plan (Action Item)
G. Community Activities and Issues
1. Hawaii Regulatory Review Initiative
2. Aha Moku
H. Report on the Bottomfish Highliners Meeting
I. Plan Team Report
J. Advisory Panel Report
K. REAC Report
L. SSC Recommendations
M. Public Comment
N. Council Discussion and Action

2 p.m.–6 p.m.

11. Program Planning and Research
A. Annual Catch Limit Analysis for Coral Reef Fin-Fish Fisheries (Action Item)
B. Offshore Aquaculture
1. Report on Experimental Permit for Offshore Aquaculture Project
2. Limited Entry for Aquaculture (Action Item)
C. Non-Commercial Data Collection Options (Action Item)
D. Coastal and Marine Spatial Planning
E. Report on 5th International Marine Debris Conference
F. Hawaii, Regional, National & International Education and Outreach
1. Report on Q-Mark Survey
G. Council Comments on Federal Register Notices
1. Paperwork Reduction Act
H. Status of Funding for Pacific Islands Region (PIR) Research
I. Migratory Bird Treaty Act Permit
J. Report on Community Development Project Program (CDPP) and Marine Education and Training (MET) Grant Review
K. Report on Status of Community Development Program (CDP) Process Development
L. Advisory Group Recommendations
M. SSC Recommendations
N. Public Hearing
O. Council Discussion and Action

Fishers Forum, 6:30 p.m.–9 p.m. (Location TBD)

9 a.m.–6 p.m., Saturday, June 18, 2011

Guest Speaker: Dr. Charles Karnella, WCPFC Chairman Perspective on Conservation and Management Measures for WCPFC 8 in December 2011.

12. Pelagic & International Fisheries
  A. Action Items
  1. Options Paper on Shallow-Set Longline Fishery for Swordfish
  2. Options for Longline Access to the American Samoa Large Pelagic Fishing Vessel Area Closures
  3. American Samoa Pelagic Fishing Vessel Landing Requirements
  4. Overfishing of Pacific Bluefin
  5. WCPFC Conservation and Management Measure for Bigeye Tuna
  a. Catch Limits for All Fisheries
  b. Trading Catches (Within and Between RFMOs)
  c. FAD Management
  6. ABC for Squid
  B. American Samoa and Hawaii Longline Quarterly Reports
  C. International Fisheries Meetings/Items
  1. IATTC Science Committee
  2. IATTC Technical Meeting on Sharks
  3. IATTC GAC/SAS Meeting
  4. WCPFC U.S. Advisory Committee
  D. Pelagic Plan Team Recommendations
  E. SSC Recommendations
  F. Public Hearing
  G. Council Discussion and Action
13. Administrative Matters
  A. Financial Reports
  B. Administrative Reports
  C. Standard Operating Practices and Procedures (SOPP) Review and Changes
  D. Council Family Changes
  E. Meetings and Workshops
  F. Other Business
  G. Executive and Budget Standing Committee Recommendations
  H. Public Comment
  I. Council Discussion and Action
14. Other Business

Non-emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 151st meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 1801 *et seq.*

Dated: May 19, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–12708 Filed 5–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA172

Marine Mammals; File No. 15453

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

ACTION: Notice; requested change to permit application.

SUMMARY: Notice is hereby given that the Waikiki Aquarium, 2777 Kalakaua Avenue Honolulu, HI 96815 (Dr. Andrew Rossiter, Responsible Party), has requested a change to the application for a permit (File No. 15453).

DATES: Written, telefaxed, or e-mail comments must be received on or before June 23, 2011.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 15453 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit (File No. 15453) has been requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

On January 27, 2011 (76 FR 4867), notice was published that a scientific research and enhancement permit had been requested by the applicant to include research on two captive Hawaiian monk seals (*Monachus schauinslandi*) and associated enhancement activities at the Waikiki Aquarium. The applicant is requesting to amend the application to request authorization to hold up to three permanently captive Hawaiian monk seals at the Waikiki Aquarium at any given time, an increase of one animal from that described in the permit application. The purpose of the request is to allow maintenance and research on an additional non-releasable monk seal in the event one becomes available; this request is in consideration of the aging seals currently maintained at the Waikiki Aquarium.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the addendum to the original application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 18, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–12764 Filed 5–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA432

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coral and Coral Reefs Off the Southern Atlantic States; Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Mr. Don DeMaria. If granted, the EFP would authorize the applicant, with certain conditions, to collect and retain limited numbers of gorgonian corals from the exclusive economic zone (EEZ), off Port Canaveral, FL, north to the North Carolina/Virginia border. The specimens would be used to support research efforts towards a grant awarded to the National Cancer Institute to screen marine invertebrates for possible anti-cancer compounds.

DATES: Comments must be received no later than 5 p.m., eastern time, on June 23, 2011.

ADDRESSES: You may submit comments on the application by either of the following methods:

• *E-mail: Nikhil.Mehta@noaa.gov.* Include in the subject line of the e-mail comment the following document identifier: "*DonDeMaria_EFP 2011*".

• *Mail:* Nikhil Mehta, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

The application and related documents are available for review upon written request to any of the above addresses.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, 727–824–5305; *e-mail: Nikhil.Mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

This action involves activities covered by regulations implementing the Fishery Management Plan for Coral, Coral Reefs, and Live/Hardbottom Habitat of the South Atlantic Region. The applicant has requested authorization to collect a maximum of 11 lb (5 kg) of gorgonian corals belonging to the Genus *Thesea* per year. Specimens would be collected in Federal waters off Port Canaveral, FL, north to the North Carolina/Virginia border. The project proposes to use SCUBA gear to make the collections. Samples would be collected from July 1, 2011 to July 31, 2014.

The overall intent of the project is to support research efforts to screen marine invertebrates for possible anti-cancer compounds. The research is part of a contract (No. HHSN261200900012C) between the National Cancer Institute (*http://www.cancer.gov/*) and the Coral Reef Research Foundation (CRRF, *http://www.coralreefresearchfoundation.org/*). Samples would be collected by Mr. DeMaria, who is a sub-contractor for CRRF.

NMFS finds this application warrants further consideration. Based on a preliminary review, NMFS intends to issue the requested EFP, pending receipt of public comments, as per 50 CFR 600.745(b)(3)(i). Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to, a prohibition on conducting research within marine protected areas, marine sanctuaries, special management zones, or artificial reefs without additional authorization. A report on the project findings is due at the end of the collection period, to be submitted to NMFS and reviewed by the South Atlantic Fishery Management Council.

A final decision on issuance of the EFP will depend on NMFS's review of public comments received on the application, consultations with the affected state, the South Atlantic Fishery Management Council, and the U.S. Coast Guard, as well as a determination that it is consistent with all applicable laws.

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

Dated: May 19, 2011.

Margo Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–12767 Filed 5–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA396

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Shallow Hazards Survey in the Chukchi Sea, 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 Statoil USA E&P Inc. (Statoil) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to a proposed open water shallow hazards survey in the Chukchi Sea, Alaska, between July through November 2011. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to Statoil to take, by Level B harassment only, thirteen species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than June 23, 2011.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing e-mail comments is *ITA.Guan@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (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.

A 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.* 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) 713–2289, ext 137.

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.

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 an authorization to incidentally take small numbers of marine mammals by harassment. 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, 2011, from Statoil for the taking, by harassment, of marine mammals incidental to shallow hazards site surveys and soil investigations (geotechnical boreholes) in the Chukchi Sea, Alaska, during the 2011 open-water season. After addressing comments from NMFS, Statoil modified its application and submitted a revised application on April 19, 2011. The April 19, 2011, application is the one available for public comment (see **ADDRESSES**) and considered by NMFS for this proposed IHA.

The proposed shallow hazards and site clearance surveys would use a towed airgun cluster consisting of four, 10-in^3 airguns with a ~600 m towed hydrophone streamer, as well as additional lower-powered and higher frequency survey equipment for collecting bathymetric and shallow sub-bottom data. The proposed survey will take place on and near Statoil's leases in the Chukchi Sea, covering a total area of ~665 km^2 located ~240 km (150 mi) west of Barrow and ~165 km (103 mi) northwest of Wainwright, in water depths of ~30–50 m (100–165 ft).

The proposed geotechnical soil investigations will take place at prospective drilling locations on Statoil's leases and leases jointly owned with ConocoPhillips Alaska Inc. (CPAI). All cores will be either 2.1 in. or 2.8 in. in diameter (depending on soil type) and those collected at prospective drilling locations will be up to 100 m in depth. The maximum total number of samples collected as part of the drilling location and site survey program will be ~29.

Statoil intends to conduct these marine surveys during the 2011 Arctic open-water season (July through November). Impacts to marine mammals may occur from noise produced from active acoustic sources (including airguns) used in the surveys.

Description of the Specified Activity

Statoil acquired 16 leases in the Chukchi Sea during Lease Sale 193 held in February 2008. The leased areas are located ~240 km (150 mi) west of Barrow and ~160 km (~100 mi) northwest of Wainwright. During the open-water season of 2010, Statoil conducted a 3D seismic survey over its lease holdings and the surrounding area. The data gathered during that survey are currently being analyzed in order to determine potential well locations on the leases. These analyses will be completed prior to commencement of the site survey program. During the open-water season of 2011, Statoil proposes to conduct shallow hazards and site clearance surveys (site surveys) and soil investigations (geotechnical boreholes).

The proposed operations will be performed from two different vessels. Shallow hazards surveys will be conducted from the M/V *Duke,* while geotechnical soil investigations will be conducted from the M/V *Fugro Synergy* (see Statoil's application for vessel specifications). Both vessels will mobilize from Dutch Harbor in late July and arrive in the Chukchi Sea to begin work on or after 1 August. Allowing for poor weather days, operations are expected to continue into late September or early October. However, if weather permits and all planned activities have not been completed, operations may continue as late as 15 November.

The site survey work on Statoil's leases will require approximately 23 days to complete. Geotechnical soil investigations on Statoil leases and on leases jointly held with CPAI will require ~14 days of operations.

Shallow Hazards and Site Clearance Surveys

Shallow hazards site surveys are designed to collect bathymetric and shallow sub-seafloor data that allow the evaluation of potential shallow faults, gas zones, and archeological features at prospective exploration drilling locations, as required by the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE). Data are typically collected using multiple types of acoustic equipment. During the site surveys, Statoil proposes to use the following acoustic sources: 4×10 in^3 airgun cluster, single 10 in^3 airgun, Kongsberg SBP3000 sub-bottom profiler, GeoAcoustics 160D side-scan sonar, and a Kongsberg EM2040 multi-beam echosounder. The operating frequencies and estimated source levels of this equipment are provided below.

1. Airguns

A 4×10 in^3 airgun cluster will be used to obtain geological data during the shallow hazards survey. A similar airgun cluster was measured by Shell in 2009 during shallow hazards surveys on their nearby Burger prospect (Reiser *et al.* 2010). The measurements resulted in 90th percentile propagation loss equations of RL =

$218.0 - 17.5\text{LogR} - 0.00061\text{R}$ for a 4×10 in^3 airgun cluster and RL = $204.4 - 16.0\text{LogR} - 0.00082\text{R}$ for a single 10 in^3 airgun (where RL = received level and R = range). The estimated 190, 180, and 160 dB_{rms} re 1 µPa isopleths are estimated at 39 m, 150 m, and 1,800 m from the source. More accurate isopleths at these received levels will be established prior to Statoil's shallow hazards survey (see below).

2. Kongsberg SBP300 Sub-Bottom Profiler

This instrument will be operated from the M/V *Duke* during site survey operations. This sub-bottom profiler operates at frequencies between 2 and 7 kHz with a manufacturer specified source level of ~225 dB re 1 µPa-m. The sound energy is projected downwards from the hull in a maximum 15° cone. However, field measurements of similar instruments in previous years have resulted in much lower actual source levels (range 161–186 dB) than specified by the manufacturers (*i.e.* the manufacturer source level of one instrument was reported as 214 dB, and field measurements resulted in a source level estimate of 186.2 dB) (Reiser *et al.* 2010). Although it is not known whether these field measurements captured the narrow primary beam produced by the instruments, Statoil will measure the sounds produced by this instrument (and all other survey equipment) at the start of operations and if sounds from the instrument are found to be above mitigation threshold levels (180 dB for cetaceans, 190 dB for seals) at a distance beyond the footprint of the vessel, then the same power-down and shut-down mitigation measures used during airgun operations will be employed during use of the sub-bottom profiler.

3. GeoAcoustics 160D Side-Scan Sonar

The side-scan sonar will be operated from the M/V *Duke* during site survey operations. This unit operates at 114 kHz and 410 kHz with a source level of ~233 dB re 1 µPa-m. The sound energy is emitted in a fan shaped pattern that is narrow (0.3–1.0°) in the fore/aft direction of the vessel and broad (40–50°) in the port/starboard direction.

4. Kongsberg EM2040 Multi-Beam Echosounder

Multi-beam echosounders also emit energy in a fan-shaped pattern, similar to the side-scan sonar described above. This unit operates at 200 to 400 kHz with a source level of ~210 dB re 1 µPa-m. The beam width is 1.5° in the fore/aft direction. The multi-beam echosounder will be operated from the M/V *Duke* during site surveys operations.

Geotechnical Soil Investigations

Geotechnical soil investigations are performed to collect detailed data on seafloor sediments and geological structure to a maximum depth of 100 m. These data are then evaluated to help determine the suitability of the site as a drilling location. Statoil has contracted with Fugro who will use the vessel M/V *Fugro Synergy* to complete the planned soil investigations. Three to four bore holes will be collected at each of up to 5 prospective drilling locations on Statoil's leases and up to 3 boreholes may be completed at each of up to 3 potential drilling locations on leases jointly owned with CPAI. This would result in a maximum total of 29 bore holes to be completed as part of the geotechnical soil investigation program. The *Fugro Synergy* operates a Kongsberg EA600 Echosounder and uses a Kongsberg 500 high precision acoustic positioning (HiPAP) system for precise vessel positioning while completing the boreholes. The operating frequencies and estimated source levels of the acoustic equipment, as well as the sounds produced during soil investigation sampling, are provided in the sub-section below.

1. Kongsberg EA600 Echosounder

This echosounder will be operated from the M/V *Fugro Synergy* routinely as a fathometer to provide depth information to the bridge crew. This model is capable of simultaneously using 4 transducers, each with a separate frequency. However, only 2 transducers will be mounted and used during this project. These transducers will operate at 18 kHz and 200 kHz and have similar or slightly lower source levels than the multi-beam echosounder described above. The energy from these transducers is emitted in a conical beam from the hull of the vessel downward to the seafloor.

2. Kongsberg HiPAP 500

The Kongsberg high precision acoustic positioning system (HiPAP) 500 is used to aid the positioning of the M/V *Fugro Synergy* during soil investigation operations. An acoustic signal is sent and received by a transponder on the hull of the vessel and a transponder lowered to the seafloor near the borehole location. The two transponders communicated via signals with a frequency of between 21–30.5 kHz with source levels expected to be in the 200–210 dB range.

3. Geotechnical Soil Investigation Sounds

In-water sounds produced during soil investigation operations by the M/V *Fugro Synergy* have not previously been measured and estimates of such activities vary. Measurements of another Fugro vessel that often conducts soil investigations were made in the Gulf of Mexico in 2009. However, because measurements were taken using a towed hydrophone system, recordings of soil investigation related sounds could not be made while the vessel was stationary. Therefore, sounds recorded while the vessel was in transit were compared to sounds recorded while the vessel also operated generators and mechanical equipment associated with soil investigation operations while in transit. The difference in sound levels during transit alone and during transit with soil investigation equipment operating was negligible and this was attributed to the fact that transit noise was dominant up to at least 7 kHz and likely masked the lower frequency sounds produced by the simulated soil investigation activities.

4. Dynamic Positioning Sound

During soil investigation operations, the M/V *Fugro Synergy* will remain stationary relative to the seafloor by means of a dynamic positioning (DP) system that automatically controls and coordinates vessel movements using bow and/or stern thrusters as well as the primary propeller(s). The sounds produced by soil investigation equipment are not likely to substantially increase overall source levels beyond those produced by the various thrusters while in DP mode. Measurements of a vessel in DP mode with an active bow thruster were made in the Chukchi Sea in 2010 (Chorney *et al.* 2011). The resulting source level estimate was 175.9 dB_{rms} re 1 µPa-m. Using the transmission loss equation from measurements of a single 60 in^3 airgun on Statoil's lease in 2010 ($RL = 205.6 - 13.9\text{LogR} - 0.00093\text{R}$; O'Neill *et al.* 2011) and replacing the constant term with the 175.9 results in an estimated range of 4.97 km to the 120 dB level. To allow for uncertainties and some additional sound energy being contributed by the operating soil investigation equipment, an inflation factor of 1.5 was applied to arrive at an estimated ≥ 120 dB radius of 7.5 km for soil investigation activities.

Description of Marine Mammals in the Area of the Specified Activity

Nine cetacean and four seal species could occur in the general area of the

site clearance and shallow hazards survey. The marine mammal species under NMFS's jurisdiction most likely to occur near operations in the Chukchi and Beaufort seas include four cetacean species: Beluga whale (*Delphinapterus leucas*), bowhead whale (*Balaena mysticetus*), gray whale (*Eschrichtius robustus*), and harbor porpoise (*Phocoena phocoena*), and three seal species: ringed (*Phoca hispida*), spotted (*P. largha*), and bearded seals (*Erignathus barbatus*). The marine mammal species that is likely to be encountered most widely (in space and time) throughout the period of the planned site clearance and shallow hazards surveys is the ringed seal.

Other marine mammal species that have been observed in the Chukchi Sea but are less frequent or uncommon in the project area include narwhal (*Monodon monoceros*), killer whale (*Orcinus orca*), fin whale (*Balaenoptera physalus*), minke whale (*B. acutorostrata*), humpback whale (*Megaptera novaeangliae*), and ribbon seal (*Histriophoca fasciata*). These species could occur in the project area, but each of these species is uncommon or rare in the area and relatively few encounters with these species are expected during the proposed shallow hazards survey. The narwhal occurs in Canadian waters and occasionally in the Beaufort Sea, but it is rare there and is not expected to be encountered. There are scattered records of narwhal in Alaskan waters, including reports by subsistence hunters, where the species is considered extralimital (Reeves *et al.* 2002).

The bowhead, fin, and humpback whales are listed as "endangered" under the Endangered Species Act (ESA) and as depleted under the MMPA. Certain stocks or populations of gray, beluga, and killer 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" under the ESA, and the bearded and ringed seals are "candidate species" under the ESA, meaning they are currently being considered for listing.

Statoil'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 2010 SAR is available at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2010.pdf.*

Potential Effects of the Specified Activity on Marine Mammals

Operating active acoustic sources such as an airgun array has the potential for adverse effects on 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 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) Tolerance

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Numerous studies have also shown that marine mammals at distances more than a few kilometers from operating survey vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times, mammals of all three types have shown no overt reactions. In general, pinnipeds and small odontocetes seem to be more tolerant of exposure to airgun pulses than baleen whales.

(2) Behavioral Disturbance

Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. These behavioral reactions are often shown as: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and reproduction. Some of these significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cease feeding or social interaction.

For example, at the Guerreo 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 noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007).

Currently NMFS uses 160 dB re 1 μPa at received level for impulse noises (such as airgun pulses) as the onset of marine mammal behavioral harassment.

(3) Masking

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 acoustic masking will have reduced fitness in survival and reproduction.

Masking occurs when noise and signals (that the animal utilizes) overlap at both spectral and temporal scales. For the airgun noise generated from the proposed site clearance and shallow hazards surveys, noise will consist of 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 near the noise source due to the brief duration of these pulses and relatively longer silence between airgun shots (9–12 seconds). However, at long distances (over tens of kilometers away), due to multipath propagation and reverberation, the durations of airgun pulses can be "stretched" to seconds with long decays (Madsen *et al.* 2006). Therefore it could affect communication signals used by low frequency mysticetes when they occur near the noise band and thus reduce the communication space of animals (e.g., Clark *et al.* 2009) and cause increased stress levels (e.g., Foote *et al.* 2004; Holt *et al.* 2009). Nevertheless, the intensity of the noise is also greatly reduced at such long distances (for example, the modeled received level drops below 120 dB re 1 μPa rms at 14,900 m from the source).

Marine mammals are thought to be able to compensate for masking by adjusting their acoustic behavior such as shifting call frequencies, increasing call volume and vocalization rates. 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 2010). The North Atlantic right whales (*Eubalaena glacialis*) exposed to high shipping noise increase call frequency (Parks *et al.* 2007), while some humpback whales respond to low-frequency active sonar playbacks by increasing song length (Miller *el al.* 2000).

(4) 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). Just like masking, marine mammals that suffer from PTS or TTS will have reduced fitness in survival and reproduction, either permanently or temporarily. Repeated noise 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.

Experiments on a bottlenose dolphin (*Tursiops truncates*) 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 μPa (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. Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.* 2002).

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 small 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; Ketten *et al.* 2001). 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).

NMFS (1995, 2000) concluded that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 μPa rms. The established 180- and 190-dB re 1 μPa rms criteria are not considered to be the levels above which TTS might occur. Rather, they are 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 unless bow-riding odontocetes are exposed to airgun pulses much stronger than 180 dB re 1 μPa rms (Southall *et al.* 2007).

No cases of TTS are expected as a result of Statoil's proposed activities given the small size of the source, 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, and the mitigation measures proposed to be implemented during the survey described later in this document.

There is no empirical evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns (see Southall *et al.,* 2007). However, given the possibility that mammals close to an airgun array might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. 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. That is, PTS might occur at a received sound level magnitudes higher than the level of onset TTS, or by repeated exposure to the levels that cause TTS. Therefore, by means of preventing the onset of TTS, it is highly unlikely that marine mammals could receive sounds strong enough (and over a sufficient duration) to cause permanent hearing impairment during the proposed marine surveys in the Chukchi Sea.

(5) 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 stress, 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 strong pulsed 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. The small airgun array proposed to be used by Statoil would only have 190 and 180 dB distances of 35 and 125 m (115 and 410 ft), respectively.

Therefore, it is unlikely that such effects would occur during Statoil's proposed surveys given the brief duration of exposure and the planned monitoring and mitigation measures described later in this document.

(6) Stranding and Mortality

Marine mammals close to underwater detonations of high explosive 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. 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 numerous 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 believe that this issue warrants 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 74905 (December 14, 2004), 71 FR 43112 (July 31, 2006), 71 FR 50027 (August 24, 2006), and 71 FR 49418 (August 23, 2006). In addition, a May–June 2008, stranding of 100–200 melon-headed whales (*Peponocephala electra*) off Madagascar that appears to be associated with seismic surveys is currently under investigation (IWC 2009).

It should be noted that strandings related to sound exposure have not been recorded for marine mammal species in the Beaufort and Chukchi seas. NMFS notes that in the Beaufort Sea, aerial surveys have been conducted by BOEMRE (formerly the Minerals Management Service or MMS) and industry during periods of industrial activity (and by MMS 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. 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 shallow hazards survey.

Potential Effects From Active Sonar Equipment on Marine Mammals

Several active acoustic sources other than the four 10 in^3 airgun have been proposed for Statoil's 2011 open water shallow hazards survey in the Chukchi Sea. The specifications of this sonar equipment (source levels and frequency ranges) are provided above. In general, the potential effects of this equipment on marine mammals are similar to those from the airgun, except the magnitude of the impacts is expected to be much less due to the lower intensity and higher frequencies. Estimated source levels from sonar equipment are discussed above. In some cases, due to the fact that the operating frequencies of some of this equipment (e.g., Multi-beam echosounder: Frequency at 200–400 kHz) are above the hearing ranges of marine mammals, they are not expected to have any impacts to marine mammals.

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 vessel and vessel used for geotechnical soil investigations. 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 were 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; O'Neill and McCrodan 2011; Chorney *et al.* 2011). For example, Garner and Hannay (2009) estimated sound pressure levels of 100 dB at distances ranging from approximately 1.5 to 2.3 mi (2.4 to 3.7 km) from various types of barges. MacDonald *et al.* (2008) estimated higher underwater SPLs from the seismic vessel *Gilavar* of 120 dB at approximately 13 mi (21 km) from the source, although the sound level was only 150 dB at 85 ft (26 m) from the vessel. Compared to airgun pulses, underwater sound from vessels is generally at relatively low frequencies. However, noise from the vessel during geophysical soil investigation while operating the DP system using thrusters as well as the primary propeller(s) could produce noise levels higher than during normal operation of the vessel. Measurements of a vessel in DP mode with an active bow thruster were made in the Chukchi Sea in 2010 (Chorney *et al.* 2011). The resulting source level estimate was 175.9 dB_{rms} re 1 μPa-m. Noise at this high level is not expected to be emitted continuously. It is emitted intermittently as the pitch is engaged to position the vessel.

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. Source levels from various vessels would be empirically measured before the start of marine surveys, and during geotechnical soil investigation while operating the DP system.

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. 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 (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).

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 it 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 negligible, and that would translate into negligible impacts on feeding mysticetes. Thus, 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.

Proposed Mitigation

In order to issue an incidental take authorization under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For the proposed Statoil open water shallow hazards survey in the Chukchi Sea, Statoil 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 shallow hazards survey activities.

As part of the application, Statoil submitted to NMFS a Marine Mammal Monitoring and Mitigation Program (4MP) for its open water shallow hazards survey in the Chukchi Sea during the 2011 open-water 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 Statoil's IHA Application

For the proposed mitigation measures, Statoil listed the following protocols to be implemented during its shallow hazards survey in the Chukchi Sea.

(1) Sound Source Measurements

As described above, previous measurements of similar airgun arrays in the Chukchi Sea were used to model the distances at which received levels are likely to fall below 120, 160, 180, and 190 dB re 1 µPa (rms) from the planned airgun sources. These modeled distances will be used as temporary safety radii 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 used for the remainder of the survey period.

The objectives of the sound source verification measurements planned for 2011 in the Chukchi Sea will be to measure the distances at which broadband received levels reach 190, 180, 170, 160, and 120 dB_{rms} re 1 µPa for the airgun configurations that may be used during the survey activities. The configurations will include at least the full array (4×10 in^3) and the operation of a single 10 in^3 airgun that will be used during power downs or very shallow penetration surveys. The measurements of airgun sounds will be made by an acoustics contractor at the beginning of the survey. The distances to the various radii will be reported as soon as possible after recovery of the equipment. The primary radii of concern will be the 190 and 180 dB safety radii for pinnipeds and cetaceans, respectively, and the 160 dB disturbance radii. In addition to reporting the radii of specific regulatory concern, nominal distances to other sound isopleths down to 120 dB_{rms} will be reported in increments of 10 dB. Sound levels during soil investigation operations will also be measured. However, source levels are not expected to be strong enough to require mitigation actions at the 190 dB or 180 dB levels.

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 vessel within 120 hours of completion of the measurements, if possible. 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.

(2) Safety and Disturbance Zones

Under current NMFS guidelines, "safety radii" for marine mammal exposure to impulse sources are customarily defined as the distances within which received sound levels are ≥180 dB_{rms} re 1 µPa for cetaceans and ≥190 dB_{rms} re 1 µPa for pinnipeds. These safety criteria are based on an assumption that SPL received at levels lower than these will not injure these animals or impair their hearing abilities, but that at higher 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 safety radii (Richardson *et al.* 1995).

Initial safety and disturbance radii for the sound levels produced by the planned airgun configurations have been estimated (Table 1). These radii will be used for mitigation purposes until results of direct measurements are available early during the exploration activities. The proposed surveys will use an airgun source composed of four

10-in^3 airguns (total discharge volume of 40 in^3) and a single 10 in^3 airgun. Underwater sound propagation from a similar 4 × 10-in^3 airgun cluster and single 10 in^3 was measured in 2009 (Reiser *et al.* 2010). Those measurements resulted in 90th percentile propagation loss equations of RL = 218.0 − 17.5LogR − 0.00061R for the 4 × 10 in^3 airgun cluster and RL = 204.4 − 16.0LogR − 0.00082R for the single 10 in^3 airgun (where RL = received level and R = range). The estimated distances for the proposed 2011 activities are based on a 25% increase over 2009 results (Table 1).

In addition to the site surveys, Statoil plans to use a dedicated vessel to conduct geotechnical soil investigations. Sounds produced by the vessel and soil investigation equipment are not expected to be above 180 dB (rms). Therefore, mitigation related to acoustic impacts from these activities is not expected to be necessary.

An acoustics contractor will perform direct measurements of the received levels of underwater sound versus distance and direction from the airguns and soil investigation vessel using calibrated hydrophones. The acoustic data will be analyzed as quickly as reasonably practicable in the field and used to verify and adjust the safety distances. The field report will be made available to NMFS and the MMOs within 120 hrs of completing the measurements. The mitigation measures to be implemented at the 190 and 180 dB sound levels will include power downs and shut downs as described below.

TABLE 1—DISTANCES TO SPECIFIED RECEIVED LEVELS MEASURED FROM A 4 × 10 IN^3 AIRGUN CLUSTER AND A SINGLE 10-IN^3 AIRGUN ON THE BURGER PROSPECT IN 2009 AS REPORTED BY REISER ET AL. (2010). THE 2011 "PRE-SSV" DISTANCES ARE A PRECAUTIONARY 25% INCREASE ABOVE THE REPORTED 2009 RESULTS AND WILL BE USED BY MMOS FOR MITIGATION PURPOSES UNTIL AN SSV IS COMPLETED IN 2011

Received Levels (dB re 1 μPa rms)	Distance (m)			
	Airgun cluster (4 × 10 in^3)		Single airgun (1 × 10 in^3)	
	2009 Results	2011 pre-SSV	2009 Results	2011 pre-SSV
190	39	50	8	10
180	150	190	34	45
160	1,800	2,250	570	715
120	31,000	39,000	19,000	24,000

(3) Speed and Course Alterations

If a marine mammal is detected outside the applicable safety radius and, based on its position and the relative motion, is likely to enter the safety radius, changes of the vessel's speed and/or direct course will be considered if this does not compromise operational safety. For marine seismic surveys using large streamer arrays, course alterations are not typically possible. However, for the smaller airgun array and streamer planned during the proposed site surveys, such changes may be possible. After any such speed and/or course alteration is begun, the marine mammal activities and movements relative to the survey vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, including a power down or shut down of the airgun(s).

(4) Power Downs

A power down for immediate mitigation purposes is the immediate reduction in the number of operating airguns such that the radii of the 190 dB_{rms} and 180 dB_{rms} zones are decreased to the extent that an observed marine mammal(s) are not in the applicable safety zone of the full array. Power downs are also used while the vessel turns from the end of one survey line to the start of the next. During a power down, one airgun (or some other number of airguns less than the full airgun array) continues firing. The continued operation of one airgun is intended to (a) alert marine mammals to the presence of the survey vessel in the area, and (b) retain the option of initiating a ramp up to full operations under poor visibility conditions.

The array will be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable safety zone of the full array, but is outside the applicable safety zone of the single mitigation airgun. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be powered down immediately. If a marine mammal is sighted within or about to enter the applicable safety zone of the single mitigation airgun, it too will be shut down (see following section).

Following a power down, operation of the full airgun array will not resume until the marine mammal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it:

- Is visually observed to have left the safety zone of the full array, or
- Has not been seen within the zone for 15 min in the case of pinnipeds or small odontocetes, or
- Has not been seen within the zone for 30 min in the case of mysticetes or large odontocetes.

(5) Shut Downs

The operating airgun(s) will be shut down completely if a marine mammal approaches or enters the then-applicable safety radius and a power down is not practical or adequate to reduce exposure to less than 190 or 180 dB_{rms}, as appropriate. In most cases, this means the mitigation airgun will be shut down completely if a marine mammal approaches or enters the estimated safety radius around the single 10 in^3 airgun while it is operating during a power down. Airgun activity will not resume until the marine mammal has cleared the safety radius. The animal will be considered to have cleared the safety radius as described above under power down procedures.

A shut down of the borehole drilling equipment may be requested by MMOs if an animal is sighted approaching the vessel close enough to potentially interact with and be harmed by the soil investigation operation.

(6) 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 (or "soft start") is to "warn" cetaceans and pinnipeds 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 site survey program, the seismic operator will ramp up the airgun cluster slowly. Full ramp ups (i.e., from a cold start after a shut down, when no airguns have been firing) will begin by firing a single airgun in the array. The minimum duration of a shut-down period, i.e., without air guns firing, which must be followed by a ramp up is typically the amount of time it would take the source vessel to cover the 180-dB safety radius. Given the small size of the planned airgun array, it is estimated that period to be about 1–2 minutes based on the modeling results described above and a survey speed of 4 kts.

A full ramp up, after a shut down, will not begin until there has been a minimum of 30 minutes of observation of the safety zone by MMOs to assure that no marine mammals are present. The entire safety zone must be visible during the 30-minute lead-in to a full ramp up. If the entire safety zone is not visible, then ramp up from a cold start cannot begin. If a marine mammal(s) is sighted within the safety zone during the 30-minute watch prior to ramp up, ramp up will be delayed until the marine mammal(s) is sighted outside of the safety zone or the animal(s) is not sighted for at least 15–30 minutes: 15 minutes for small odontocetes and pinnipeds, or 30 minutes for baleen whales and large odontocetes.

During turns or brief transits between survey transects, one airgun will continue operating. The ramp-up procedure will still be followed when increasing the source levels from one airgun to the full 4-airgun cluster. However, keeping one airgun firing will avoid the prohibition of a cold start during darkness or other periods of poor visibility. Through use of this approach, survey operations can resume upon entry to a new transect without the 30-minute watch period of the full safety radius required for a cold start. MMOs will be on duty whenever the airguns are firing during daylight, and during the 30-min periods prior to ramp-ups as well as during ramp-ups. Daylight will occur for 24 h/day until mid-August, so until that date MMOs will automatically be observing during the 30-minute period preceding a ramp up. Later in the season, MMOs will be called to duty at night to observe prior to and during any ramp ups. The survey operator and MMOs will maintain records of the times when ramp-ups start, and when the airgun arrays reach full power.

Additional Mitigation Measures Proposed by NMFS

Besides Statoil's proposed mitigation measures discussed above, NMFS proposes the following additional protective measures to address some uncertainties regarding the impacts of bowhead cow-calf pairs and aggregations of whales from shallow hazards surveys. Specifically, NMFS proposes that

- A 160-dB vessel monitoring zone for large whales will be established and monitored in the Chukchi Sea during all shallow hazards surveys. Whenever an aggregation of bowhead whales or gray whales (12 or more whales of any age/sex class that appear to be engaged in a non-migratory, significant biological behavior (e.g., feeding, socializing)) are observed during a vessel monitoring program within the 160-dB safety zone around the survey operations, the survey activity will not commence or will shut down, until they are no longer present within the 160-dB safety zone of shallow hazards surveying operations.

Furthermore, NMFS proposes the following measures be included in the IHA, if issued, in order to ensure the least practicable impact on the affected species or stocks:

(1) All vessels should reduce speed when within 300 yards (274 m) of whales, and those vessels capable of steering around such groups should do so. Vessels may not be operated in such a way as to separate members of a group of whales from other members of the group;

(2) Avoid multiple changes in direction and speed when within 300 yards (274 m) of whales; and

(3) When weather conditions require, such as when visibility drops, support vessels must adjust speed (increase or decrease) and direction accordingly to avoid the likelihood of injury to whales.

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.

Monitoring Measures Proposed in Statoil's IHA Application

The monitoring plan proposed by Statoil 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 or from the peer review panel (see the "Monitoring Plan Peer Review" section later in this document). A summary of the primary components of the plan follows.

(1) Vessel-Based MMOs

Vessel-based monitoring for marine mammals will be done by trained MMOs throughout the period of marine survey activities. MMOs will monitor the occurrence and behavior of marine mammals near the survey vessel during all daylight periods during operation and during most daylight periods when airgun operations are not occurring. MMO 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 sufficient number of MMOs will be required onboard the survey vessel to meet the following criteria: (1) 100% monitoring coverage during all periods of survey operations in daylight; (2) maximum of 4 consecutive hours on watch per MMO; and (3) maximum of

12 hours of watch time per day per MMO.

MMO teams will consist of Inupiat observers and experienced field biologists. An experienced field crew leader will supervise the MMO team onboard the survey vessel. The total number of MMOs may decrease later in the season as the duration of daylight decreases. Statoil currently plans to have 5 MMOs aboard the site survey vessel and 3 MMOs aboard the soil investigation vessel, with the potential of reducing the number of MMOs later in the season as daylight periods decrease in length.

Crew leaders and most other biologists serving as observers in 2011 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.

Observers will complete a two or three-day training session on marine mammal monitoring, to be conducted shortly before the anticipated start of the 2011 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.

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), by USFWS or Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), or by other agreements in which Statoil may elect to participate;
- Review of marine mammal sighting, identification, and distance estimation methods;
- Review of operation of specialized equipment (reticle binoculars, night vision devices, 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.

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 with 20×60 image-stabilized Zeiss Binoculars or Fujinon 25×150 "Big-eye" binoculars, 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 marine mammal 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:

(A) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from the MMO, apparent reaction to activities (*e.g.,* none, avoidance, approach, paralleling, *etc.*), closest point of approach, and behavioral pace;

(B) Time, location, speed, activity of the vessel, sea state, ice cover, visibility, and sun glare; and

(C) The positions of other vessel(s) in the vicinity of the MMO location.

The ship's position, speed of support vessels, and water temperature, water depth, sea state, ice cover, visibility, 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.

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 night-vision devices (NVDs) in the Beaufort and Chukchi seas 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).

(2) Acoustic Monitoring

Sound Source Measurements

As described above, previous measurements of airguns in the Chukchi Sea were used to estimate the distances at which received levels are likely to fall below 120, 160, 180, and 190 dB_{rms} from the planned airgun sources. These modeled distances will be used as temporary safety radii 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 used for the remainder of the survey period. An acoustics contractor 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 verification measurements planned for 2011 in the Chukchi Sea will be (1) to measure the distances at which broadband received levels reach 190, 180, 170, 160, and 120 dB_{rms} re 1 μPa for the airgun configurations that may be used during the survey activities. The configurations will include at least the full array (4×10 in^3) and the operation of a single 10 in^3 airgun that will be used during power downs or very shallow penetration surveys.

2011 Joint Environmental Studies Program

Statoil, Shell Offshore, Inc. (Shell), and ConocoPhillips Alaska Inc. (CPAI) are working on plans to once again jointly fund an extensive environmental studies program in the Chukchi Sea. This program is expected to be coordinated by Olgoonik-Fairweather LLC (OFJV) during the 2011 open water season. The environmental studies program is not part of the Statoil site survey and soil investigations program, but acoustic monitoring equipment is planned to be deployed on and near Statoil leases and will therefore collect additional data on the sounds produced by the 2011 activities. The program components include:

- Acoustics Monitoring
- Fisheries Ecology
- Benthic Ecology
- Plankton Ecology
- Marine Mammal Surveys
- Seabird Surveys, and
- Physical Oceanography.

The planned 2011 program will continue the acoustic monitoring programs carried out in 2006–2010. A similar number of acoustic recorders as deployed in past years will be distributed broadly across the Chukchi lease area and nearshore environment. In past years, clusters of recorders designed to localize marine mammal calls originating within or nearby the clusters have been deployed on each of the companies' prospects: Amundsen (Statoil), Burger (Shell), and Klondike (CPAI). This year, recorders from the clusters are planned to be relocated in a broader deployment on and around Hanna Shoal.

The recorders will be deployed in late July or mid-August and will be retrieved in early to mid-October, depending on ice conditions. The recorders will be AMAR and AURAL model acoustic

buoys set to record at 16 kHz sample rate. These are the same recorder models and same sample rates that have been used for this program from 2006–2010. The broad area arrays are designed to capture both general background soundscape data, industrial sounds and marine mammal call data across the lease area. From previous deployments of these recordings we have been able to gain insight into large-scale distributions of marine mammals, identification of marine mammal species present, movement and migration patterns, and general abundance data.

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 an independent peer review panel to review Statoil's mitigation and monitoring plan in its IHA application for taking marine mammals incidental to the proposed shallow hazards survey in the Chukchi Sea, during 2011. The panel met and reviewed the plan in early March 2011, and provided comments to NMFS in April 2011. NMFS is currently reviewing the panel report and will consider all recommendations made by the panel, incorporate appropriate changes into the monitoring requirements of the IHA (if issued) and publish the panel's findings and recommendations in the final IHA notice of issuance or denial document.

Reporting Measures

(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_{rms} re 1 μPa radii of the source vessel(s) and the support vessels, 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 safety zones that were adopted for the marine survey activities.

(2) Field Reports

Statoil states that throughout the survey program, the observers will prepare a report each day or at such other interval as the IHA (if issued), or Statoil 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 Statoil's 2011 vessel-based monitoring, including estimates of "take" by harassment, will be presented in the "90-day" and Final Technical reports. Statoil proposes that the Technical Reports will include:

(a) Summaries of monitoring effort (*e.g.,* total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);

(b) Analyses of the effects of various factors influencing detectability of marine mammals (*e.g.,* sea state, number of observers, and fog/glare);

(c) Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover;

(d) 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), such as:
- 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) Comprehensive Report

Following the 2011 open-water season a comprehensive report describing the vessel-based and acoustic monitoring programs will be prepared. The comprehensive report will describe the methods, results, conclusions and limitations of each of the individual data sets in detail. The report will also integrate (to the extent possible) the studies into a broad based assessment of industry activities, and other activities that occur in the Beaufort and/or Chukchi seas, and their impacts on marine mammals during 2011. The report will help to establish long-term data sets that can assist with the evaluation of changes in the Chukchi and Beaufort sea ecosystems. The report will attempt to provide a regional synthesis of available data on industry activity in offshore areas of northern Alaska that may influence marine mammal density, distribution and behavior.

(5) Notification of Injured or Dead Marine Mammals

In addition to the reporting measures proposed by Statoil, NMFS will require that Statoil notify NMFS' Office of Protected Resources and NMFS' Stranding Network within 48 hours of sighting an injured or dead marine mammal in the vicinity of marine survey operations. Statoil shall provide NMFS with the species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that an injured or dead marine mammal is found by Statoil that is not in the vicinity of the proposed open water marine survey program, Statoil will report the same information as listed above as soon as operationally feasible to NMFS.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B behavioral harassment is anticipated as a result of the proposed open water marine survey program. Anticipated impacts to marine mammals are associated with noise propagation from the survey airgun(s) used in the shallow hazards 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 open water 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. For reasons discussed previously in this document, hearing impairment (TTS and PTS) are highly unlikely to occur based on the proposed mitigation and monitoring measures that would preclude marine mammals being exposed to noise levels high enough to cause hearing impairment.

For impulse sounds, such as those produced by airgun(s) used in the seismic survey, NMFS uses the 160 dB_{rms} re 1 µPa isopleth to indicate the onset of Level B harassment. For non-impulse sounds, such as noise generated during the geotechnical soil investigation that involves drilling bore holes and running DP thruster of the vessel, NMFS uses the 120 dB_{rms} re 1 µPa isopleth to indicate the onset of Level B harassment. Statoil provided calculations for the 160- and 120-dB isopleths produced by these activities and then used those isopleths to estimate takes by harassment. NMFS used the calculations to make the necessary MMPA preliminary findings. Statoil provided a full description of the methodology used to estimate takes by harassment in its IHA application (see **ADDRESSES**), which is also provided in the following sections.

Statoil has requested an authorization to take 13 marine mammal species by Level B harassment. These 13 marine mammal species are: Beluga whale (*Delphinapterus leucas*), narwhal (*Monodon monoceros*), killer whale (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), bowhead whale (*Balaena mysticetus*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), fin whale (*B. physalus*), bearded seal (*Erignathus barbatus*), ringed seal (*Phoca hispida*), spotted seal (*P. largha*), and ribbon seal (*Histriophoca fasciata*).

Basis for Estimating "Take by Harassment"

As stated previously, it is current NMFS policy to estimate take by Level B harassment for impulse sounds at a received level of 160 dB_{rms} re 1µPa. 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. 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 for the studies summarized the more severe reactions did not occur until sounds were much higher than 160 dB_{rms} re 1µPa.

As described earlier in the document, a 4×10 in^3 airgun cluster will be used to obtain geological data during the site surveys. A similar airgun cluster was measured by Shell in 2009 during shallow hazards surveys on their nearby Burger prospect (Reiser *et al.* 2010). The measurements resulted in 90th percentile propagation loss equations of $RL = 218. - 17.5LogR - 0.00061R$ for a 4×10 in^3 airgun cluster and $RL = 204.4 - 16.0LogR - 0.00082R$ for a single 10 in^3 airgun (where RL = received level and R = range). For use in estimating potential harassment takes in this application, as well as for mitigation radii to be implemented by MMOs prior to SSV measurements, ranges to threshold levels from the 2009 measurements were increased by 25% as a precautionary approach (Table 1). The ≥160 dB distance is therefore estimated to be 2.25 km from the source. Adding a 2.25 km perimeter to the two site survey areas results in an estimated area of 1,037 km^2 being exposed to ≥160 dB.

Geotechnical soil investigations on the Statoil leases and leases jointly owned with CPAI will involve completing 3–4 boreholes at up to 8 total prospective drilling locations for an expected maximum of 29 boreholes. The 3–4 boreholes completed at each drilling location will be positioned in a square or triangle formation, roughly 100 m on each side. As described earlier, the sounds produced by soil investigation equipment are estimated to fall below 120 dB at a distance of 7.5 km. Buffering 4 core sites spaced 100 m apart with the 7.5 km 120 dB distance results in a total area of 180 km^2. The total area exposed to sounds ≥120 dB by soil investigations at the 8 prospective drilling locations will therefore be 1,440 km^2.

The following subsections describe the estimated densities of marine mammals that may occur in the areas where activities are planned, and areas of water that may be ensonified by pulsed sounds to ≥ 160 dB or non-pulsed sounds to ≥ 120 dB.

Marine mammal densities near the planned activities in the Chukchi Sea are likely to vary by season, and habitat. Therefore, densities have been derived for two time periods, the summer period, including July and August, and the fall period, including September and October. Animal densities encountered in the Chukchi Sea during both of these time periods will further depend on whether they are occurring in open water or near the ice margin. Vessel and equipment limitations will result in very little activity occurring in or near sea ice, however, if ice is present near the areas of activity some sounds produced by the activities may remain above disturbance threshold levels in ice margin habitats. Therefore, open water densities have been used to estimate potential "take by harassment" in 90% of the area expected to be ensonified above disturbance thresholds while ice margin densities have been used in the remaining 10% of the ensonified area.

Detectability bias [f(0)] is associated with diminishing sightability with increasing lateral distance from the trackline. Availability bias [g(0)] refers to the fact that there is < 100% probability of sighting an animal that is present on the survey trackline. Some sources of densities used below included these correction factors in their reported densities. In other cases the best available correction factors were applied to reported results when they had not been included in the reported analyses (*e.g.* Moore *et al.* 2000).

(1) Cetaceans

Eight species of cetaceans are known to occur in the Chukchi Sea area of the proposed Statoil project. Only four of these (bowhead, beluga, and gray whales, and harbor porpoise) are likely to be encountered during the proposed survey activities. Three of the eight species (bowhead, fin, and humpback whales) are listed as endangered under the ESA. Of these, only the bowhead is likely to be found within the survey area.

Beluga Whales—Summer densities of belugas in offshore waters of the Chukchi Sea are expected to be low, with higher densities in ice-margin and nearshore areas. Aerial surveys have recorded few belugas in the offshore Chukchi Sea during the summer months (Moore *et al.* 2000). Aerial surveys of the Chukchi Sea in 2008–2009 flown by the NMML as part of the Chukchi Offshore Monitoring in Drilling Area project (COMIDA) have only reported 5 beluga

sightings during > 14,000 km of on-transect effort, only 2 of which were offshore (COMIDA 2009). One of the three nearshore sightings was of a large group (~275 individuals on July 12, 2009) of migrating belugas along the coastline just north of Peard Bay. Additionally, only one beluga sighting was recorded during > 61,000 km of visual effort during good visibility conditions from industry vessels operating largely in offshore areas of the Chukchi Sea in September–October of 2006–2008 (Haley *et al.* 2010). If belugas are present during the summer, they are more likely to occur in or near the ice edge or close to shore during their northward migration. Expected densities have previously been calculated from data in Moore *et al.* (2000). However, more recent data from COMIDA aerial surveys during 2008–2010 are now available. Effort and sightings reported by Clarke and Ferguson (in prep.) were used to calculate the average open-water density estimate. Clarke and Ferguson (in prep.) reported two on-transect beluga sightings (5 individuals) during 11,985 km of on-transect effort in waters 36–50 m deep in the Chukchi Sea during July and August. The mean group size of these two sightings is 2.5 animals. A f(0) value of 2.841 and g(0) value of 0.58 from Harwood *et al.* (1996) were also used in the density calculation. Specific data on the relative abundance of beluga whales in open-water versus ice-margin habitats during the summer in the Chukchi Sea are not available. However, belugas are commonly associated with ice, so an inflation factor of 4 was used to estimate the average ice-margin density from the open-water density. Very low densities observed from vessels operating in the Chukchi Sea during non-seismic periods and locations in July–August of 2006–2008 (0.0–0.0001/km^2; Haley *et al.* 2010) also suggest the number of beluga whales likely to be present near the planned activities will not be large (Table 2).

In the fall, beluga whale densities in the Chukchi Sea are expected to be somewhat higher than in the summer because individuals of the eastern Chukchi Sea stock and the Beaufort Sea stock will be migrating south to their wintering grounds in the Bering Sea (Allen and Angliss 2010). However, there were no beluga sightings reported during > 18,000 km of vessel based effort in good visibility conditions during 2006–2008 industry operations in the Chukchi Sea (Haley *et al.* 2010). Densities derived from survey results in the northern Chukchi Sea in Clarke and Ferguson (in prep.) were used as the average density for open-water fall season estimates (see Table 3). Clarke and Ferguson (in prep.) reported 3 beluga sightings (6 individuals) during 10,036 km of on-transect effort in water depths 36–50 m. The mean group size of those three sightings is 2 animals. A f(0) value of 2.841 and g(0) value of 0.58 from Harwood *et al.* (1996) were used in the calculation. Moore *et al.* (2000) reported lower than expected beluga sighting rates in open-water during fall surveys in the Beaufort and Chukchi seas, so an inflation value of 4 was used to estimate the average ice-margin density from the open-water density. Based on the lack of any beluga sightings from vessels operating in the Chukchi Sea during non-seismic periods and locations in September–October of 2006–2008 (Haley *et al.* 2010), the relative low densities shown in Table 3 are consistent with what is likely to be observed from vessels during the planned operations.

TABLE 2—EXPECTED DENSITIES OF CETACEANS AND SEALS IN AREAS OF THE CHUKCHI SEA, ALASKA, DURING THE PLANNED SUMMER (JULY–AUGUST) PERIOD OF THE SHALLOW HAZARDS SURVEY PROGRAM

Species	Open water	Ice margin
	Average density (#/km^2)	Average density (#/km^2)
Beluga whale	0.0010	0.0040
Narwhal	0.0000	0.0000
Killer whale	0.0001	0.0001
Harbor porpoise	0.0011	0.0011
Bowhead whale	0.0013	0.0013
Fin whale	0.0001	0.0001
Gray whale	0.0258	0.0258
Humpback whale	0.0001	0.0001
Minke whale	0.0001	0.0001
Bearded seal	0.0107	0.0142
Ribbon seal	0.0005	0.0005
Ringed seal	0.3668	0.4891
Spotted seal	0.0073	0.0098

TABLE 3—EXPECTED DENSITIES OF CETACEANS AND SEALS IN AREAS OF THE CHUKCHI SEA, ALASKA, DURING THE PLANNED FALL (SEPTEMBER–OCTOBER) PERIOD OF THE SHALLOW HAZARDS SURVEY PROGRAM

Species	Open water	Ice margin
	Average density (#/km^2)	Average density (#/km^2)
Beluga whale	0.0015	0.0060
Narwhal	0.0000	0.0000
Killer whale	0.0001	0.0001
Harbor porpoise	0.0001	0.0001
Bowhead whale	0.0219	0.0438
Fin whale	0.0001	0.0001
Gray whale	0.0080	0.0080
Humpback whale	0.0001	0.0001
Minke whale	0.0001	0.0001
Bearded seal	0.0107	0.0142

TABLE 3—EXPECTED DENSITIES OF CETACEANS AND SEALS IN AREAS OF THE CHUKCHI SEA, ALASKA, DURING THE PLANNED FALL (SEPTEMBER–OCTOBER) PERIOD OF THE SHALLOW HAZARDS SURVEY PROGRAM—Continued

Species	Open water	Ice margin
	Average density (#/km²)	Average density (#/km²)
Ribbon seal	0.0005	0.0005
Ringed seal	0.2458	0.3277
Spotted seal	0.0049	0.0065

Bowhead Whales—By July, most bowhead whales are northeast of the Chukchi Sea, within or migrating toward their summer feeding grounds in the eastern Beaufort Sea. No bowheads were reported during 10,684 km of on-transect effort in the Chukchi Sea by Moore et *al.* (2000). Aerial surveys in 2008–2010 by the NMML as part of the COMIDA project reported six sightings during 25,781 km of on-transect effort (Clarke and Ferguson 2011). Two of the six sightings were in waters ≤ 35 m deep and the remaining four sightings were in waters 51–200 m deep. Bowhead whales were also rarely sighted in July–August of 2006–2008 during aerial surveys of the Chukchi Sea coast (Thomas *et al.* 2010). This is consistent with movements of tagged whales (ADFG 2010) all of which moved through the Chukchi Sea by early May 2009, and tended to travel relatively close to shore, especially in the northern Chukchi Sea. The estimate of summer bowhead whale density in the Chukchi Sea was calculated by assuming there was one bowhead sighting during the 11,985 km of survey effort in waters 36–50 m deep in the Chukchi Sea during July–August reported in Clarke and Ferguson (in prep.), although no bowheads were actually observed during those surveys. The mean group size from September–October sightings reported in Clarke and Ferguson (in prep.) is 1.1, and this was also used in the calculation of summer densities. The group size value, along with a f(0) value of 2 and a g(0) value of 0.07, both from Thomas *et al.* (2002) were used to estimate a summer density of bowhead whales (Table 2). Bowheads are not expected to be encountered in higher densities near ice in the summer (Moore *et al.* 2000), so the same density estimates are used for open-water and ice-margin habitats. Densities from vessel based surveys in the Chukchi Sea during non-seismic periods and locations in July–August of 2006–2008 (Haley *et al.* 2010) ranged from 0.0001–0.0007/km² with a maximum 95 percent confidence interval (CI) of 0.0029/km². This suggests the densities used in the calculations and shown in Table 3 are somewhat higher than are likely to be observed from vessels near the area of planned operations.

During the fall, bowhead whales that summered in the Beaufort Sea and Amundsen Gulf migrate west and south to their wintering grounds in the Bering Sea, making it more likely that bowheads will be encountered in the Chukchi Sea at this time of year. Moore *et al.* (2000; Table 8) reported 34 bowhead sightings during 44,354 km of on-transect survey effort in the Chukchi Sea during September–October. Thomas *et al.* (2010) also reported increased sightings on coastal surveys of the Chukchi Sea during September and October of 2006–2008. GPS tagging of bowheads appear to show that migration routes through the Chukchi Sea are more variable than through the Beaufort Sea (Quakenbush *et al.* 2010). Some of the routes taken by bowheads remain well north of the planned activities while others have passed near to or through the area. Kernel densities estimated from GPS locations of whales suggest that bowheads do not spend much time (e.g., feeding or resting) in the north-central Chukchi Sea near the area of planned activities (Quakenbush *et al.* 2010). Clarke and Ferguson (in prep.) reported 14 sightings (15 individuals) during 10,036 km of on transect aerial survey effort in 2008–2010. The mean group size from those sightings is 1.1. The same f(0) and g(0) values that were used for the summer estimates above were used for the fall estimates (Table 3). Moore *et al.* (2000) found that Bowheads were detected more often than expected in association with ice in the Chukchi Sea in September–October, so a density of twice the average open-water density was used as the average ice-margin density (Table 3). Densities from vessel based surveys in the Chukchi Sea during non-seismic periods and locations in September–October of 2006–2008 (Haley *et al.* 2010) ranged from 0.0003/km² to 0.0044/km² with a maximum 95 percent CI of 0.0419 km². This suggests the densities used in the calculations and shown in Table 3 are somewhat higher than are likely to be observed from vessels near the area of planned operations.

Gray Whales—Gray whale densities are expected to be much higher in the summer months than during the fall. Moore *et al.* (2000) found the distribution of gray whales in the planned operational area was scattered and generally limited to nearshore areas where most whales were observed in water less than 35 m deep. Thomas *et al.* (2010) also reported substantial declines in the sighting rates of gray whales in the fall. The average open-water summer density (Table 2) was calculated from effort and sightings reported by Clarke and Ferguson (in prep.) for water depths 36–50 m including 54 sightings (73 individuals) during 11,985 km of on-transect effort. The average group size of those sightings is 1.35 animals. Correction factors f(0) = 2.49 (Forney and Barlow 1998) and g(0) = 0.30 (Forney and Barlow 1998; Mallonee 1991) were also used in the density calculation. Gray whales are not commonly associated with sea ice, but may be present near it, so the same densities were used for ice-margin habitat as were derived for open-water habitat during both seasons. Densities from vessel based surveys in the Chukchi Sea during non-seismic periods and locations in July–August of 2006–2008 (Haley *et al.* 2010) ranged from 0.0021/km² to 0.0080/km² with a maximum 95 percent CI of 0.0336 km².

In the fall, gray whales may be dispersed more widely through the northern Chukchi Sea (Moore *et al.* 2000), but overall densities are likely to be decreasing as the whales begin migrating south. A density calculated from effort and sightings (15 sightings [19 individuals] during 10,036 km of on-transect effort) in water 36–50 m deep during September–October reported by Clarke and Ferguson (in prep.) was used as the average estimate for the Chukchi Sea during the fall period (Table 3). The corresponding group size value of 1.26, along with the same f(0) and g(0) values described above were also used in the calculation. Densities from vessel based surveys in the Chukchi Sea during non-seismic periods and locations in July–

August of 2006–2008 (Haley *et al.* 2010) ranged from 0.0026/km² to 0.0042/km² with a maximum 95 percent CI of 0.0277 km².

Harbor Porpoise—Harbor Porpoise densities were estimated from industry data collected during 2006–2008 activities in the Chukchi Sea. Prior to 2006, no reliable estimates were available for the Chukchi Sea and harbor porpoise presence was expected to be very low and limited to nearshore regions. Observers on industry vessels in 2006–2008, however, recorded sightings throughout the Chukchi Sea during the summer and early fall months. Density estimates from 2006–2008 observations during non-seismic periods and locations in July–August ranged from 0.0008/km² to 0.0015/km² with a maximum 95 percent CI of 0.0079/km² (Haley *et al.* 2010). The average of those three years (0.0011/km²) was used as the average open-water density estimate while the high value (0.0015/km²) was used as the maximum estimate (Table 2). Harbor porpoise are not expected to be present in higher numbers near ice, so the open-water densities were used for ice-margin habitat in both seasons. Harbor porpoise densities recorded during industry operations in the fall months of 2006–2008 were slightly lower than the summer months and ranged from 0.0002/km² to 0.0010/km² with a maximum 95 percent CI of 0.0093/km². The average of those three years (0.0001/km²) was again used as the average density estimate and the high value 0.0011/km² was used as the maximum estimate (Table 3).

Other Cetaceans—The remaining five cetacean species that could be encountered in the Chukchi Sea during Statoil's planned activities include the humpback whale, killer whale, minke whale, fin whale, and narwhal. Although there is evidence of the occasional occurrence of these animals in the Chukchi Sea, it is unlikely that more than a few individuals will be encountered during the planned activities. George and Suydam (1998) reported killer whales, Brueggeman *et al.* (1990) and Haley *et al.* (2010) reported minke whale, and COMIDA (2009) and Haley *et al.* (2010) reported fin whales. Narwhal sightings in the Chukchi Sea have not been reported in recent literature, but subsistence hunters occasionally report observations near Barrow, and Reeves *et al.* (2002) indicated a small number of extralimital sightings in the Chukchi Sea.

(2) Pinnipeds

Four species of pinnipeds may be encountered in the Chukchi Sea: Ringed seal, bearded seal, spotted seal, and ribbon seal. Each of these species, except the spotted seal, is associated with both the ice margin and the nearshore area. The ice margin is considered preferred habitat (as compared to the nearshore areas) during most seasons.

Ringed and Bearded Seals—Ringed seal and bearded seal summer ice-margin densities (Table 2) were taken from Bengtson *et al.* (2005) who conducted spring surveys in the offshore pack ice zone (zone 12P) of the northern Chukchi Sea. However, a correction for bearded seal availability bias, g(0), based on haulout and diving patterns was not available and used in the reported densities. Densities of ringed and bearded seals in open water are expected to be somewhat lower in the summer when preferred pack ice habitat may still be present in the Chukchi Sea. Average and maximum open-water densities have been estimated as ¾ of the ice margin densities during both seasons for both species. The fall density of ringed seals in the offshore Chukchi Sea has been estimated as ⅔ the summer densities because ringed seals begin to reoccupy nearshore fast ice areas as it forms in the fall. Bearded seals may also begin to leave the Chukchi Sea in the fall, but less is known about their movement patterns so fall densities were left unchanged from summer densities. For comparison, the ringed seal density estimates calculated from data collected during summer 2006–2008 industry operations ranged from 0.0158/km² to 0.0687/km² with a maximum 95 percent CI of 0.1514/km² (Haley *et al.* 2010). These estimates are lower than those made by Bengtson *et al.* (2005) which is not surprising given the different survey methods and timing.

Spotted Seal—Little information on spotted seal densities in offshore areas of the Chukchi Sea is available. Spotted seal densities in the summer were estimated by multiplying the ringed seal densities by 0.02. This was based on the ratio of the estimated Chukchi populations of the two species. Chukchi Sea spotted seal abundance was estimated by assuming that 8 percent of the Alaskan population of spotted seals is present in the Chukchi Sea during the summer and fall (Rugh *et al.* 1997), the Alaskan population of spotted seals is 59,214 (Allen and Angliss 2010), and that the population of ringed seals in the Alaskan Chukchi Sea is ~208,000 animals (Bengtson *et al.* 2005). In the fall, spotted seals show increased use of coastal haulouts so densities in offshore areas were estimated to be ⅔ of the summer densities.

Ribbon Seal—Two ribbon seal sightings were reported during industry vessel operations in the Chukchi Sea in 2006–2008 (Haley *et al.* 2010). The resulting density estimate of 0.0005/km² was used as the average density.

Potential Number of Takes by Harassment

This subsection provides estimates of the number of individuals potentially exposed to sound levels ≥ 160 dB_{rms} re 1 μPa by pulsed airgun sounds and to ≥ 120 dB_{rms} re 1 μPa by non-impulse sounds during geotechnical soil investigations. The estimates are based on a consideration of the number of marine mammals that might be disturbed appreciably by operations in the Chukchi Sea and the anticipated area exposed to those sound levels.

The number of individuals of each species potentially exposed to received levels of pulsed sounds ≥ 160 dB_{rms} re 1 μPa or to ≥ 120 dB_{rms} re 1 μPa by continuous sounds within each season and habitat zone was estimated by multiplying

- The anticipated area to be ensonified to the specified level in each season and habitat zone to which that density applies, by
- The expected species density.

The numbers of individuals potentially exposed were then summed for each species across the two seasons and habitat zones. Some of the animals estimated to be exposed, particularly migrating bowhead whales, might show avoidance reactions before being exposed to pulsed airgun sounds ≥ 160 dB_{rms} re 1 μPa. Thus, these calculations actually estimate the number of individuals potentially exposed to the specified sound levels that would occur if there were no avoidance of the area ensonified to that level.

Site survey and geotechnical soil investigations are planned to occur primarily in August and September, with the potential to continue into mid-November, if necessary and weather permitting. For the purposes of assigning activities to the summer (August) and fall (September–October) periods for which densities have been estimated above, we have assumed that half of the operations will occur during the summer period and half will occur in the fall period. Additionally, the planned activities cannot be completed in or near significant amounts of sea ice, so 90% of the activity each season (and associated ensonified areas) has been multiplied by the open-water densities described above, while the remaining 10% of activity has been multiplied by the ice-margin densities.

Species with an estimated average number of individuals exposed equal to zero are included below for completeness, but are not likely to be encountered.

(1) Shallow Hazards and Site Clearance Surveys

The estimated numbers of marine mammals potentially exposed to airgun sounds with received levels ≥ 160 dB_{rms} from site surveys on Statoil's leases are shown in Table 4. The average estimate of the number of individual bowhead whales exposed to received sound levels ≥ 160 dB is 11. The average estimate for gray whales is slightly greater at 18, while few belugas are expected to be exposed (Table 4). Few other cetaceans (such as narwhal, harbor porpoise, killer, humpback, fin, and minke whales) are likely to be exposed to airgun sounds ≥ 160 dB, but estimates have been included to account for chance encounters.

Ringed seals are expected to be the most abundant animal in the Chukchi Sea during this period and the average estimate of the number exposed to ≥ 160 dB by site survey activities is 337 (Table 4). Estimated exposures of other seal species are substantially below those for ringed seals (Table 4).

TABLE 4—SUMMARY OF THE NUMBER OF MARINE MAMMALS IN AREAS WHERE MAXIMUM RECEIVED SOUND LEVELS IN THE WATER WOULD BE ≥ 160 DB IN SUMMER (AUG) AND FALL (SEP–OCT) PERIODS DURING STATOIL'S PLANNED SITE SURVEYS IN THE CHUKCHI SEA, ALASKA. NOT ALL MARINE MAMMALS ARE EXPECTED TO CHANGE THEIR BEHAVIOR WHEN EXPOSED TO THESE SOUND LEVELS

Species	Number of individuals exposed to sound levels ≥ 160 dB				
	Summer		Fall		Total
	Open water	Ice margin	Open water	Ice margin	
Beluga whale	0	0	1	0	2
Narwhal	0	0	0	0	2
Killer whale	0	0	0	0	2
Harbor porpoise	1	0	0	0	1
Bowhead whale	1	0	10	0	11
Gray whale	12	1	4	1	18
Humpback whale	0	0	0	0	2
Fin whale	0	0	0	0	2
Minke whale	0	0	0	0	2
Bearded seal	5	1	5	1	12
Ribbon seal	0	0	0	0	1
Ringed seal	171	25	115	25	337
Spotted seal	3	1	2	1	7

(2) Geotechnical Soil Investigations

The estimated numbers of marine mammals potentially exposed to continuous sounds with received levels ≥ 120 dB_{rms} from geotechnical soil investigations on Statoil's leases and jointly owned leases are shown in Table 5. The average estimate of the number of individual bowhead whales exposed to received sound levels ≥ 120 dB is 15. The average estimate for gray whales is slightly larger at 26 individuals (Table 5). Few other cetaceans (such as narwhal, harbor porpoise, killer, humpback, fin, and minke whales) are likely to be exposed to soil investigation sounds ≥ 120 dB, but estimates have been included to account for chance encounters.

The average estimate of the number of ringed seals potentially exposed to ≥120 dB by soil investigation activities is 467 (Table 5). Estimated exposures of other seal species are substantially below those for ringed seals (Table 5).

TABLE 5—SUMMARY OF THE NUMBER OF MARINE MAMMALS IN AREAS WHERE MAXIMUM RECEIVED SOUND LEVELS IN THE WATER WOULD BE ≥ 120 DB IN SUMMER (AUG) AND FALL (SEP–OCT) PERIODS DURING STATOIL'S PLANNED GEOTECHNICAL SOIL INVESTIGATIONS IN THE CHUKCHI SEA, ALASKA. NOT ALL MARINE MAMMALS ARE EXPECTED TO CHANGE THEIR BEHAVIOR WHEN EXPOSED TO THESE SOUND LEVELS

Species	Number of individuals exposed to sound levels ≥ 120 dB				
	Summer		Fall		Total
	Open water	Ice margin	Open water	Ice margin	
Beluga whale	1	0	1	0	2
Narwhal	0	0	0	0	3
Killer whale	0	0	0	0	3
Harbor porpoise	1	0	0	0	1
Bowhead whale	1	0	14	0	15
Gray whale	17	2	5	2	26
Humpback whale	0	0	0	0	3
Fin whale	0	0	0	0	3
Minke whale	0	0	0	0	3
Bearded seal	7	1	7	1	16
Ribbon seal	0	0	0	0	1
Ringed seal	238	35	159	35	467
Spotted seal	5	1	3	1	10

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".

Using the 160 dB criterion, the average estimates of the numbers of individual cetaceans exposed to sounds < 160 dB_{rms} re 1 μPa 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 26 bowheads. This number is approximately 0.18% of the Bering-Chukchi-Beaufort population of > 14,247 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 shallow hazards survey in the Chukchi Sea, they also represent a very small proportion of their respective populations. The average estimates of the number of belugas, killer whales, harbor porpoises, gray whales, humpback whales, fin whales, and minke whales that might be exposed to <160 dB and 120 dB re 1 μPa are 4, 5, 2, 44, 5, 5, and 5. These numbers represent 0.11%, 1.59%, 0.004%, 0.25%, 0.53%, 0.09%, and 0.50% of these species of their respective populations in the proposed action area. No population estimates of narwhal are available in U.S. waters due to its extralimital distribution here. The world population of narwhal is estimated at 75,000 (Laidre *et al.* 2008), and most of them are concentrated in the fjords and inlets of Northern Canada and western Greenland. The estimated take of 5 narwhals represents approximately 0.01% of its 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_{rms} re 1 μPa during the proposed shallow hazards survey are as follows: ringed seals (803), bearded seals (28), spotted seals (17), and ribbon seals (2). These numbers represent 0.35%, 0.01%, 0.03%, and 0.002% of Alaska stocks of ringed, bearded, spotted, and ribbon seals, respectively.

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.

No injuries or mortalities are anticipated to occur as a result of Statoil's proposed 2011 open water marine shallow hazards surveys in the Chukchi Seas, and none are proposed to be authorized. In addition, these surveys would use a small 40 in^3 airgun array and several mid- to high-frequency active acoustic sources. The acoustic power output is much lower than full scale airgun arrays used in a 2D or 3D seismic survey, and thus generates much lower source levels. The modeled isopleths at 160 dB is expected to be less than 2.25 km from the source (see discussion earlier). Additionally, animals in the area are not expected to incur hearing impairment (*i.e.,* TTS or PTS) or non-auditory physiological effects. Takes will be limited to Level B behavioral harassment. Although it is possible that some individuals of marine mammals may be exposed to sounds from shallow hazards survey activities more than once, the expanse of these multi-exposures are expected to be less extensive since both the animals and the survey vessels will be moving constantly in and out of the survey areas.

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 μPa. 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). Belugas will likely occur in small numbers in the Chukchi Sea during the survey period and few will likely be affected by the survey activity. In addition, due to the constant moving of the survey vessel, the duration of the noise exposure by cetaceans to seismic impulse would be brief. For the same reason, it is unlikely that any individual animal would be exposed to high received levels multiple times.

For animals exposed to machinery noise from geotechnical oil investigations, NMFS considers that at received levels ≥ 120 dB re 1 μPa, the animals could respond behaviorally in a manner that NMFS considers Level B harassment due to the non-pulse nature of the noise involved in this activity. During soil investigation operations, the most intensive noise source is from the dynamic positioning (DP) system that automatically controls and coordinates vessel movements using bow and/or stern thrusters. Measurements of a similar vessel in DP mode in the Chukchi Sea in 2010 provided an estimated source level at about 176 dB re 1 μPa, which is below what NMFS uses to assess Level A harassment of received levels at 180 dB for cetaceans and 190 dB for pinnipeds. In addition, the duration of the entire geotechnical oil investigation is approximately 14 days, and DP will only be running sporadically when needed to position the vessel. In addition, the oil investigation operations are expected to be stationary, with limited area to be ensonified. Therefore, the impacts to marine mammals in the vicinity of the oil investigation operations are expected to be in short duration and localized.

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".

Furthermore, the estimated numbers of animals potentially exposed to sound levels sufficient to cause appreciable disturbance are very low percentages of the population sizes in the Bering-Chukchi-Beaufort seas, as described above.

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 marine mammal observers, non-pursuit, and shut downs 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 to sound 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 shallow hazards surveys and soil investigation in the Chukchi Sea is not expected to result in more than Level B harassment and is anticipated to have no more than a negligible impact on the animals.

Of the thirteen marine mammal species likely to occur in the proposed marine survey area, only the bowhead, fin, and humpback whales are 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). The occurrence of fin and humpback whales in the proposed marine survey areas is considered very rare. There is no critical habitat designated in the U.S. Arctic for the bowhead, fin, and humpback whale. The bearded and ringed seals are "candidate species" under the ESA, meaning they are currently being considered for listing but are not designated as depleted under the MMPA. None of the other species that may occur in the project area are listed as threatened or endangered under the ESA or designated as depleted under the MMPA.

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.

The estimated takes proposed to be authorized represent 0.11% of the Eastern Chukchi Sea population of approximately 3,710 beluga whales (Allen and Angliss 2010), 1.59% of Aleutian Island and Bering Sea stock of approximately 314 killer whales, 0.004% of Bering Sea stock of approximately 48,215 harbor porpoises, 0.25% of the Eastern North Pacific stock of approximately 17,752 gray whales, 0.18% of the Bering-Chukchi-Beaufort population of 14,247 bowhead whales assuming 3.4 percent annual population growth from the 2001 estimate of 10,545 animals (Zeh and Punt, 2005), 0.53% of the Western North Pacific stock of approximately 938 humpback whales, 0.09% of the North Pacific stock of approximately 5,700 fin whales, and 0.50% of the Alaska stock of approximately 1,003 minke whales. The take estimates presented for bearded, ringed, spotted, and ribbon seals represent 0.01, 0.35, 0.03, and 0.002 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. In addition, the mitigation and monitoring measures (described previously in this document) proposed for inclusion in the IHA (if issued) are expected to reduce even further any potential disturbance to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that Statoil's proposed 2011 open water shallow hazards survey in the Chukchi Sea may result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the marine surveys will have a negligible impact on the affected species or stocks. Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Relevant Subsistence Uses

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. 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). 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, walruses, 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.

Marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives; species hunted include bowhead and beluga whales; ringed, spotted, and bearded seals; walruses, and polar bears. The importance of each of the various species varies among the communities based largely on availability. Bowhead whales, belugas, and walruses are the marine mammal species primarily harvested during the time of the proposed shallow hazard survey. There is little or no bowhead hunting by the community of Point Lay, so beluga and walrus hunting are of more importance there. Members of the Wainwright community hunt bowhead whales in the spring, although bowhead whale hunting conditions there are often more difficult than elsewhere, and they do not hunt bowheads during seasons when Statoil's survey operation would occur. Depending on the level of success during the spring bowhead hunt, Wainwright residents may be very dependent on the presence of belugas in a nearby lagoon system during July and August. Barrow residents focus hunting efforts on bowhead whales during the spring and generally do not hunt beluga then. However, Barrow residents also hunt in the fall, when Statoil expects to be conducting shallow hazards surveys (though not near Barrow).

(1) Bowhead Whales

Bowhead whale hunting is a key activity in the subsistence economies of northwest Arctic communities. 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 (IWC) in 1977. The quota is now regulated through an agreement between NMFS and the Alaska Eskimo Whaling Commission (AEWC). The AEWC allots the number of bowhead whales that each whaling community may harvest annually (USDI/BLM 2005). The annual take of bowhead whales has varied due to (a) changes in the allowable quota level and (b) year-to-

year variability in ice and weather conditions, which strongly influence the success of the hunt.

Bowhead whales migrate around northern Alaska twice each year, during the spring and autumn, and are hunted in both seasons. Bowhead whales are hunted from Barrow during the spring and the fall migration and animals are not successfully harvested every year. The spring hunt along Chukchi villages and at Barrow occurs 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 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.

In the fall, subsistence hunters use aluminum or fiberglass boats with outboards. 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 50 mi (80 km). The autumn bowhead hunt usually begins in Barrow in mid-September, and mainly occurs in the waters east and northeast of Point Barrow.

The scheduling of this shallow hazard survey has been discussed with representatives of those concerned with the subsistence bowhead hunt, most notably the AEWC, the Barrow Whaling Captains' Association, and the North Slope Borough (NSB) Department of Wildlife Management.

The planned mobilization and start date for shallow hazards surveys in the Chukchi Sea (~25 July and ~1 August, respectively) is well after the end of the spring bowhead migration and hunt at Wainwright and Barrow. Shallow hazards survey and soil investigation operations will be conducted far offshore from Barrow and Wainwright are not expected to conflict with subsistence hunting activities. Specific concerns of the Barrow whaling captains are addressed as part of the Plan of Cooperation/Conflict Avoidance Agreement that is being negotiated with the AEWC (see below).

(2) Beluga Whales

Beluga whales are available to subsistence hunters along the coast of Alaska in the spring when pack-ice conditions deteriorate and leads open up. Belugas may remain in coastal areas or lagoons through June and sometimes into July and August. The community of Point Lay is heavily dependent on the hunting of belugas in Kasegaluk Lagoon for subsistence meat. From 1983–1992 the average annual harvest was ~40 whales (Fuller and George 1997). In Wainwright and Barrow, 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 1997; Alaska Beluga Whale Committee 2002 in USDI/BLM 2005). The seismic survey activities take place well offshore, far away from areas that are used for beluga hunting by the Chukchi Sea communities.

(3) Ringed 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 average annual ringed seal harvest was 49 seals in Point Lay, 86 in Wainwright, and 394 in Barrow (Braund *et al.* 1993; USDI/BLM 2003; 2005). Although ringed seals are available year-round, the planned activities will not occur during the primary period when these seals are typically harvested. Also, the activities will be largely in offshore waters where the activities will not influence ringed seals in the nearshore areas where they are hunted.

(4) Spotted Seals

The spotted seal subsistence hunt peaks in July and August along the shore where the seals haul out, but usually involves relatively few animals. Spotted seals typically migrate south by October to overwinter in the Bering Sea. During the fall migration spotted seals are hunted by the Wainright and Point Lay communities as the seals move south along the coast (USDI/BLM 2003). 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 planned activities will remain offshore of the coastal harvest area of these seals and should not conflict with harvest activities.

(5) Bearded Seals

Bearded seals, although generally not favored for their meat, are important to subsistence activities in Barrow and Wainright, 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 spring and summer months in the Chukchi Sea (USDI/BLM 2003; 2005). The animals inhabit the environment around the ice floes in the drifting nearshore ice pack, so hunting usually occurs from boats in the drift ice. Most bearded seals are harvested in coastal areas inshore of the proposed survey so no conflicts with the harvest of bearded seals are expected.

In the event that both marine mammals and hunters are near the areas of planned operations, the proposed project potentially could impact the availability of marine mammals for harvest in a small area immediately around the vessel, in the case of pinnipeds, and possibly in a large area in the case of migrating bowheads. However, the majority of marine mammals are taken by hunters within ~21 mi (~33 km) from shore, and the survey activities will occur far offshore, well outside the hunting areas. Considering the timing and location of the proposed shallow hazards survey activities, as described earlier in the document, the proposed project is not expected to have any significant impacts to the availability of marine mammals for subsistence harvest. Specific concerns of the respective communities are addressed as part of the Plan of Cooperation between Statoil and the AEWC.

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.

Noise and general activity during Statoil's proposed open water shallow hazards survey 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 divert from their

normal migratory path by 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 Chukchi Sea, 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.

In addition, 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.

Plan of Cooperation (POC or Plan)

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.

Statoil states that it intends to maintain an open and transparent process with all stakeholders throughout the life-cycle of activities in the Chukchi Sea. Statoil began the stakeholder engagement process in 2009 with meeting Chukchi Sea community leaders at the tribal, city, and corporate level. Statoil will continue to engage with leaders, community members, and subsistence groups, as well as local, state, and federal regulatory agencies throughout the exploration and development process.

As part of stakeholder engagement, Statoil is developing a Plan of Cooperation (POC) for the proposed 2011 activities. The POC summarizes the actions Statoil will take to identify important subsistence activities, inform subsistence users of the proposed survey activities, and obtain feedback from subsistence users regarding how to promote cooperation between subsistence activities and the Statoil program.

During the early phase of the POC process for the proposed project, Statoil met with the North Slope Borough Department of Wildlife Management (Dec 2010) and the AEWC (mini-convention in Barrow, Feb 2011). Statoil also arranged to visit and hold public meetings in the affected Chukchi Sea villages, including Pt. Hope, Pt. Lay, Wainwright, and Barrow during the week of 21 March, 2011.

Based upon these meetings, a draft POC document is being developed. Upon completion, the draft POC will be submitted to each of the community leaders Statoil visited during the March meetings as well as other interested community members. Statoil will also submit the draft POC to NMFS, USFWS, and BOEMRE.

A final POC that documents all consultations with community leaders, subsistence user groups, individual subsistence users, and community members will be submitted to NMFS, USFWS, and BOEMRE upon completion of consultations.

Subsistence Mitigation Measures

Statoil plans to introduce the following mitigation measures, plans and programs to potentially affected subsistence groups and communities. These measures, plans, and programs have been effective in past seasons of work in the Arctic and were developed in past consultations with these communities.

Statoil will not be entering the Chukchi Sea until early August, so there will be no potential conflict with spring bowhead whale or beluga subsistence whaling in the polynya zone. Statoil's planned activities area is ~100 mi (~ 161 km) northwest of Wainwright which reduces the potential impact to subsistence hunting activities occurring along the Chukchi Sea coast.

The communication center in Wainwright will be jointly funded by Statoil and other operators, and Statoil will routinely call the communication center according to the established protocol while in the Chukchi Sea. Depending on survey progress, Statoil may perform a crew change in the Nome area in Alaska. The crew change will not involve the use of helicopters. Statoil does have a contingency plan for a potential transfer of a small number of crew via ship-to-shore vessel at Wainwright. If this should become necessary, the Wainwright communications center will be contacted to determine the appropriate vessel route and timing to avoid potential conflict with subsistence users.

Prior to survey activities, Statoil will identify transit routes and timing to avoid other subsistence use areas and communicate with coastal communities before operating in or passing through these areas.

Unmitigable Adverse Impact Analysis and Preliminary Determination

NMFS has preliminarily determined that Statoil's proposed 2011 open water shallow hazards survey in the Chukchi Sea 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 Statoil's draft POC. Statoil has adopted a spatial and temporal strategy for its Chukchi Sea operations that should minimize impacts to subsistence hunters. Statoil will enter the Chukchi Sea far offshore, so as to not interfere with July hunts in the Chukchi Sea villages. After the close of the July beluga whale hunts in the Chukchi Sea villages, very little whaling occurs in Wainwright, Point Hope, and Point Lay. Although the fall bowhead whale hunt in Barrow will occur while Statoil is still operating (mid- to late September to October), Barrow is approximately 150 mi (241 km) east of the eastern boundary of the proposed shallow hazards survey site. Based on these factors, Statoil's Chukchi Sea shallow hazards survey is not expected to interfere with the fall bowhead harvest in Barrow. In recent years, bowhead whales have occasionally been taken in the fall by coastal villages along the Chukchi coast, but the total number of these animals has been small.

Adverse impacts are not anticipated on sealing activities since the majority of hunts for seals occur in the winter and spring, when Statoil will not be operating. Additionally, most sealing activities occur much closer to shore than Statoil's proposed shallow hazards survey area.

Based on the measures described in Statoil's Draft 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 Statoil's open water shallow hazards survey in the Chukchi Sea.

Endangered Species Act (ESA)

There are three marine mammal species listed as endangered under the ESA with confirmed or possible occurrence in the proposed project area: The bowhead, humpback, and fin whales. NMFS' Permits, Conservation and Education Division has initiated consultation with NMFS' Protected

Resources Division under section 7 of the ESA on the issuance of an IHA to Statoil 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)

In 2010, NMFS prepared an Environmental Assessment (EA) and issued findings of no significant impact (FONSIs) for open-water seismic and marine surveys in the Beaufort and Chukchi seas by Shell and Statoil. A review of Statoil's proposed 2011 open-water shallow hazards surveys indicates that the planned action is essentially the same as the marine survey conducted by Shell in 2010, but on a smaller scale. In addition, the review indicated that there is no significant change in the environmental baselines from what were analyzed in 2010. Therefore, NMFS is preparing a Supplemental EA which incorporates by reference the 2010 EA and other related documents, and updates the activity to reflect the lower impacts compared to the previous season.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to Statoil's 2011 open water shallow hazards survey in the Chukchi Sea, Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 17, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–12666 Filed 5–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA116

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Pile Replacement Project

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the U.S. Navy (Navy) to incidentally harass, by Level B harassment only, five species of marine mammals during pile driving and removal activities conducted as part of a pile replacement project in the Hood Canal, Washington.

DATES: This authorization is effective from July 16, 2011, through July 15, 2012.

ADDRESSES: A copy of the IHA and application are available by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

A copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Supplemental documents, including the Navy's Environmental Assessment and NMFS' associated Finding of No Significant Impact, prepared pursuant to the National Environmental Policy Act (NEPA), are available at the same site. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Ben Laws, NMFS, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371(a)(5)(D)) directs the Secretary of Commerce (Secretary) to authorize, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and monitoring and reporting of such takings. 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 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 small numbers of marine mammals. Within 45 days of the close of the public 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 December 16, 2010, from the Navy for the taking of marine mammals incidental to pile driving and removal in association with a pile replacement project in the Hood Canal at Naval Base Kitsap in Bangor, Washington (NBKB). Vibratory and impulsive pile driving and vibratory and pneumatic chipping removal operations associated with the pile replacement project have the potential to affect marine mammals within the waterways adjacent to NBKB, and could result in harassment as defined in the MMPA. This pile replacement project will occur between July 16, 2011, and July 15, 2013, with this IHA covering the first year of work. Six species of marine mammals may be present within the waters surrounding NBKB: Steller sea lions (*Eumetopias jubatus*), California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), killer whales (*Orcinus orca*), Dall's porpoises (*Phocoenoides dalli*), and harbor porpoises (*Phocoena phocoena*). These species may occur year-round in the Hood Canal, with the exception of the Steller sea lion. Steller sea lions are present only from fall to late spring (November–June), outside of

the project's in-water work timeline (July 16–October 31). Additionally, while the Southern Resident killer whale (listed as endangered under the Endangered Species Act [ESA]) is resident to the inland waters of Washington and British Columbia, it is not found in the Hood Canal and was therefore excluded from further analysis. Only the five species which may be present during the project's timeline may be exposed to sound pressure levels associated with vibratory and impulsive pile driving, and were analyzed in detail in NMFS' analysis of this action.

Description of the Specified Activity

In accordance with regulations implementing the MMPA, NMFS published notice of the proposed IHA in the **Federal Register** on February 4, 2011 (76 FR 6406). A complete description of the action was included in that notice and will not be reproduced here.

NBKB is located on the Hood Canal approximately 20 miles (32 km) west of Seattle, Washington, and provides berthing and support services to Navy submarines and other fleet assets. The Navy proposes to complete necessary repairs and maintenance at the Explosive Handling Wharf #1 (EHW–1) facility at NBKB as part of a pile replacement project to restore and maintain the structural integrity of the wharf and ensure its continued functionality to support necessary operational requirements. The EHW–1 facility has been compromised due to the deterioration of the wharf's existing piling sub-structure. The project includes the removal of the fragmentation barrier, walkway, and 138 steel and concrete piles at EHW–1. Of the piles requiring removal, 96 are 24-in (0.6 m) diameter hollow pre-cast concrete piles which will be excised down to the mud line. An additional three 24-in (0.6 m) steel fender piles, and thirty-nine 12-in (0.3 m) steel fender piles, will be extracted using a vibratory hammer. Also included in the repair work is the installation of 28 new 30-in (0.8 m) diameter steel pipe piles, the construction of new cast-in-place pile caps (concrete formwork may be located below Mean Higher High Water [MHHW]), the installation of the pre-stressed superstructure, the installation of five sled-mounted cathodic protection (CP) systems, and the installation or re-installation of related appurtenances.

The removal and installation of piles at EHW–1 is broken up into three components described in detail below and depicted in Figure 1–3 of the Navy's application. The first component of this project will entail:

- Removal of one 24-in diameter steel fender pile and its associated fender system components at the outboard support;
- Installation of sixteen 30-in diameter hollow steel pipe piles;
- Construction of two cast-in-place concrete pile caps, to be situated on the tops of the steel piles located directly beneath the structure in order to function as a load transfer mechanism between the superstructure and the piles; and
- Installation of three sled mounted passive CP systems, banded to the steel piles to prevent corrosion.

The second component of this project will require:

- Removal of two 24-in diameter steel fender piles at the main wharf and associated fender system components;
- Installation of twelve 30-in diameter hollow steel pipe piles;
- Construction of four concrete pile caps;
- Installation of a pre-stressed concrete superstructure, or concrete deck of the wharf;
- Installation of two sled mounted passive CP systems; and
- Installation or re-installation of related appurtenances.

The final component of this project will be:

- Removal of the concrete fragmentation barrier and walkway, likely by cutting the concrete into sections (potentially three or four in total) using a saw, or other equipment, and removal using a crane; and
- Removal of the piles supporting the fragmentation barrier, including:
  - Thirty-nine 12-in diameter steel fender piles
  - Ninety-six 24-in diameter hollow pre-cast concrete piles cut to the mud line.

Vibratory driving will be the preferred method for all pile installation, and vibratory methods will be used for removal of all steel piles. Concrete piles will be removed with a pneumatic chipping hammer or another tool capable of cutting through concrete. The concrete debris will be captured using debris curtains/sheeting and removed from the project area. During pile installation, depending on local site conditions, it may be necessary to drive some piles for the final few feet with an impact hammer. This technique, known as proofing, may be required due to substrate refusal. As a result of consultation with USFWS under the ESA, impact pile driving, if required for proofing, will not occur on more than five days, and no more than one pile may be proofed in a given day. Further, impact driving or proofing will be limited to 15 minutes per pile (up to five piles total). During previous repairs at EHW–1, no use of impact driving has been required to accomplish installation. All impact driving will be conducted with the use of a sound attenuation device (*e.g.,* bubble curtain) to minimize in-water noise.

Vibratory pile driving is restricted to the time period between July 16 and October 31, while impact driving would only be performed between July 16 and September 30. Non-pile driving, in-water work can be performed between July 16 and February 15. The Navy will monitor hydroacoustic levels, as well as the presence and behavior of marine mammals during pile installation and removal. In total, twenty-eight 30-in steel piles will be installed and 138 piles, steel and concrete, will be removed.

The Navy estimates that steel pile installation and removal will occur at an average rate of two piles per day. For each pile installed, the driving time is expected to be no more than 1 hour for the vibratory portion. Impact pile driving, when required, will be limited to a maximum of five piles, with no more than one pile driven in a given day and no more than 15 minutes per pile. Steel piles will be extracted using a vibratory hammer. Extraction is anticipated to take approximately 30 minutes per pile. Concrete piles will be removed using a pneumatic chipping hammer or other similar concrete demolition tool. It is estimated that concrete pile removal could occur at a rate of five piles per day maximum, but removal will more likely occur at a rate of three piles per day. It is expected to take approximately 2 hours to remove each concrete pile with a pneumatic chipping hammer. For steel piles, this results in a maximum of two hours of pile driving per pile or potentially 4 hours per day. For concrete piles, this results in a maximum of 2 hours of pneumatic chipping per pile, or potentially 6 hours per day. The total estimated time from vibratory pile driving during steel pile installation would be approximately 14 days (28 piles at an average of two per day). The total time from impact pile driving during steel pile installation would be 5 days (five piles at one per day). The total time from vibratory pile driving during steel pile removal would be 21 days (42 piles at an average of two per day). The total time using a pneumatic chipping hammer during concrete pile removal would be 32 days (96 piles at an average of three per day).

For pile driving activities, the Navy used NMFS-promulgated thresholds for assessing pile driving and removal impacts (NMFS 2005b, 2009). The Navy used recommended spreading loss formulas (the practical spreading loss equation for underwater sounds and the spherical spreading loss equation for airborne sounds) and empirically-measured source levels from other similar events, including impact driving 30-in (0.8 m) diameter steel piles, vibratory removal of 30-in steel piles, and removal of 24-in concrete piles with a jackhammer to estimate potential marine mammal exposures. Predicted exposures are outlined later in this document. The calculations predict that no injury, serious injury, or mortality would occur associated with pile driving or removal activities, and that 2,488 Level B harassments may occur during the pile replacement project from underwater sound. No incidents of harassment were predicted from airborne sounds associated with pile driving.

Comments and Responses

On February 4, 2011, NMFS published a notice of the proposed IHA (76 FR 6406) in response to the Navy's request to take marine mammals incidental to a pile replacement project and requested comments and information concerning that request. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (MMC). The MMC's comments and NMFS' responses are detailed below.

Comment 1: The MMC recommends that NMFS require the Navy to make careful observations in conjunction with in-air sound propagation information in order to add to the limited data available so that in the future thresholds for harassment due to airborne sound can be set based on more robust data.

Response: NMFS agrees with the MMC about the importance of founding thresholds for behavioral harassment from airborne sound upon the best scientific information available, and about the importance of collecting additional data to improve that information. As described in the notice of proposed IHA, the Navy will be required to collect information regarding observed marine mammal behavioral responses to project activities, and if possible, the correlation to sound pressure levels. This information will be included in the Navy's monitoring report after completion of the pile replacement project.

Comment 2: The MMC recommends that NMFS require the Navy to provide a full description of the survey methods used during shoreline surveys at NBKB, including how the Navy searched for animals, if and how it corrected its estimate for sighting probability, and if and how it corrected its estimate for decreasing sighting probability with distance from the observer.

Response: The Navy has conducted two types of shoreline surveys at NBKB. The first set, which generated data used by the Navy in calculating density for California sea lions, are opportunistic visual and binocular area scans for marine mammals conducted by NBKB personnel from land at the NBKB waterfront. Sightings of marine mammals at manmade haul-out locations (*e.g.,* piers) along the NBKB waterfront and in waters adjoining these locations are recorded. NBKB personnel attempt to conduct these surveys daily during a typical work week (i.e., Monday–Friday), although inclement weather or security constraints sometimes preclude surveying. Due to these constraints, the number of surveys conducted each month varies. During July–October (the period of in-water work for the pile replacement project), surveys have been conducted an average of thirteen times per month. Data recorded during these scans includes species, behavior, associated habitat, and weather, among other descriptive information. The majority of all sightings are of hauled-out individuals.

No correction factor for sighting probability of California sea lions was used because there is no existing data to support it. The availability of a published study in which the movement of tagged animals was used in conjunction with aerial surveys allowed the Navy to use such a correction factor for harbor seals. The Navy did not correct for decreasing detection probability with distance because it would be atypical to do so for shoreline pinniped surveys. Correcting for decreasing sighting probability with distance is appropriate for at-sea surveys, typically targeted towards cetaceans. In addition, no information that could potentially support such a correction was collected during the surveys. Each shoreline and wharf location is at a different height above the surface; therefore, the distance surveyed offshore is different at each position, which would result in deviations in detection probability rather than a constant value. However, the area surveyed of nearshore waters adjoining manmade haul-out locations is generally contained within the Waterfront Restricted Area (WRA), which extends approximately 500–1000 m offshore, and is generally able to be clearly observed.

The second set of shoreline surveys conducted by the Navy, which generated data used by the Navy in calculating density for Dall's porpoise and harbor porpoise, were defined line transect surveys. Marine mammal surveys were conducted from a small vessel operating at a speed of approximately five knots. Surveys involved following pre-determined transects parallel to the shoreline along the 3.5-mi (5.6 km) waterfront. Transects were run from shallow water to deeper water with the first transect in each area located approximately 300 ft (91 m) offshore. Additional parallel transects were located at 300-ft intervals out to 1,800 ft (549 m) from shore. During these surveys, the distance surveyed offshore generally encompassed the area out to the WRA, resulting in a total area of 3.9 km^2 for each survey. Two observers and a vessel operator performed the surveys. Observers were trained in identification of marine mammal species and behavior, distance estimation, and area scanning techniques in order to reduce observer variation and avoid missed detections.

While on transect, the two observers scanned from zero degrees off the bow to ninety degrees abeam on each side of the vessel. Observers scanned ahead of the vessel for diving mammals and communicated any wildlife detections to the other observer to minimize missed detections and avoid duplicate observations. Observers scanned continuously, not staring in one direction, with a complete scan taking about 4–8 seconds. An observer focusing beyond 100 m is likely to miss some animals that are closer; thus, observers varied their focus from near to far fields in scanning within the 90-degree arc on each side of the vessel, and used binoculars only for species identification but not for sighting animals. To maintain effective transect width, animals detected through binoculars that would not otherwise have been detected with the naked eye were recorded in the comments field of the data form as being off transect. For each detection, time stamps were generated and location recorded with a GPS. In addition, the observers recorded a compass bearing and distance to each animal or group of animals at the point of first detection. Distances were measured with a laser rangefinder when possible. Number and species of animals and behavior at first sighting were recorded.

Comment 3: The MMC recommends that NMFS require the Navy to (1)

explain why it used the anticipated area of ensonification rather than surveyed area to estimate sea lion density and (2) correct the density estimate unless the Navy has a reasoned basis for not making such corrections.

Response: The data employed in deriving a density estimate for California sea lions comes from the first set of surveys (shoreline surveys) described previously. NMFS has determined that these surveys provide the best available data for determining sea lion density. The other available dataset (defined line transect surveys) included only 16 survey days in 2007–2008 during the time period in which the pile replacement project will occur (July–October); only six sightings of California sea lions were recorded during these 16 survey days. Two sightings were of individuals swimming, and the other four sightings were of groups of hauled-out animals. All observations of California sea lions during these surveys were over a mile away from the test pile location.

Although the first dataset is limited in not having a defined survey area, as exists for the second dataset, the first dataset provides several years of data with many more data points for the months in which the pile replacement project is scheduled to occur and is thus the more robust source of data for estimating density of California sea lions. As described previously, the shoreline surveys averaged 13 survey days per month during July-October of 2008–2009, thus providing 104 data points compared with 16 for the line transect surveys. In addition, use of this more robust dataset results in a more conservative estimate for California sea lion density. The Navy also investigated published studies external to survey efforts at NBKB. Ideally, aerial surveys encompassing the local population's entire geographic range, used in conjunction with a correction factor for sighting probability, would be available, as was the case for harbor seals. However, this data is not available for California sea lions in Hood Canal.

Because these surveys are of known manmade haul-out areas and adjoining waters, and are conducted from land, there is no appropriate way to define an area surveyed. It would not be appropriate to define survey area strictly as the area observed (i.e., the WRA) because the vast majority of sighted animals are hauled-out. At haul-outs, animals that forage over some greater area—unknown in this case—congregate in greater numbers than would be found in the absence of the availability of such habitat. Thus, a density calculated for animals found at known haul-outs and adjoining waters would not be applicable to the broader marine waters of the action area and would result in a gross exaggeration of sea lion numbers if extrapolated to that larger area. Because all of the California sea lion observations were of hauled-out individuals, which gives a reasonable proxy understanding of the numbers of animals that are utilizing waters in the vicinity of the project area for foraging, a reasonable method of generating a realistic in-water density would be to determine the approximate area that might be used by the animals when swimming and/or foraging. However, minimal data is available regarding the foraging home ranges of California sea lions. Research by Costa *et al.,* (2007) regarding the foraging behavior of 32 adult females in California indicated that they travel an average distance of 66.3 +/− 11 km from rookeries. Data from Wright *et al.,* (2010) for fourteen wintering males from the Columbia River indicate that travel is a maximum of 70 km from shore. Additional data for twelve adult males from mixed stocks in Washington showed a maximum travel distance of 99 km per day (Wright *et al.,* 2010). Given these data regarding California sea lion travel during foraging trips, NMFS feels that using the maximum action area—the largest area affected by underwater sound produced by the action (*i.e.,* 41.5 km^2)—as proposed by the Navy is an acceptable representation of the area in which these animals may be expected to forage in Hood Canal.

In a previous environmental analysis for Dabob Bay, located in Hood Canal to the south of the action area, the Navy used published data (Jeffries *et al.,* 2000) to produce a density estimate of 0.052 animals/km^2. While that was likely an underestimate, the density estimate produced by the methodology described here (0.410 animals/km^2) is significantly higher, and thus more conservative. The density estimate is conservative in part because the Navy used the highest recorded daily values for each month in the dataset to estimate density. For example, in September 2009, the Navy used the highest recorded value of 32 animals; the daily average for twelve surveys conducted that month was 6.75 animals. In addition, California sea lions are generally not present in the action area during July-August (one observed sea lion in 51 survey days during July-August 2008–2009).

It is possible that the data used, and the methodology used in estimating density, are not ideal. However, as described here, the data used is the best available, and the method of estimating density is the most appropriate based on available information. The density estimate is also likely conservative, as described here. Finally, no better information or alternative method of estimating density was provided or proposed to NMFS during the public comment period.

Comment 4: The MMC recommends that NMFS require the Navy to re-estimate the expected number of in-water and in-air takes for harbor seals using the overall density of harbor seals in Hood Canal (i.e., 3.74 animals/km^2).

Response: As described in NMFS' notice of proposed IHA, the entire population of harbor seals in Hood Canal is estimated at 1,088 (Jeffries *et al.,* 2003). Using this estimate, with the entire area of Hood Canal (291 km^2), produces a density estimate of 3.74 animals/km^2. This data represents comprehensive, dedicated aerial surveys that were conducted for harbor seals hauled out in the Hood Canal by the Washington State Department of Fish and Wildlife from 1978–1999. However, the work by Jeffries *et al.,* (2003) used a correction factor of 1.53, based on VHF-tagging data (Huber *et al.,* 2001), to account for seals in the water and not counted. The tagged animals were from the same populations that were surveyed aerially. The data from Huber *et al.,* (2001) indicated that approximately 65 percent of harbor seals are hauled-out at a given moment (i.e., only 35 percent of seals are in the water at a given moment). The data loggers in these studies ran 24 hours per day. These studies computed the average proportion ashore for all seals in the population assuming an annual basis; therefore, the data indicates that the percentage of harbor seals that can be in the water at any one time (35 percent) is assumed to be reasonably consistent on a daily basis for the entire year. As a result, exposures to underwater sound were calculated using a density derived from the number of harbor seals that are anticipated to be present in the water at any one time (35 percent of 1,088, or approximately 381 animals; 1.31 animals/km^2).

There are a number of caveats associated with use of this data. The cited studies involved aerial surveys that were conducted primarily at low-tide, when maximum numbers of seals were hauled-out. However, the correction factor applied to determine the total population and take into account in-water harbor seals was not based on the aerial surveys but on VHF tag data which is unaffected by tidal influences. While some of the aerial surveys were conducted in Hood Canal, Huber *et al.'*s (2001) tagging data came from outside Hood Canal. The VHF data

came from radio tags deployed in three sites within the coastal stock and three sites within the inland waters stock to determine any regional haul-out variability. While Hood Canal was not specifically sampled in Huber *et al.'*s (2001) study, Jefferies *et al.* (2003)—Huber was an author on this study as well—found the VHF data broadly applicable to all inland water stocks and applied it to estimate the total population for the inland waters. While it is possible that proportions of harbor seals in the water versus on land in Hood Canal could deviate slightly from other inland water stock populations, it is unlikely that such deviation would be large. No similar site specific data exists for Hood Canal. Therefore, the data described here is considered the best available.

It is possible that the density estimate used for estimating take may be an underestimate. Vibratory pile driving/extraction is estimated as occurring a maximum of four hours per day—with pneumatic chipping likely occurring a maximum of 6 hours in any day—and it is reasonable to expect that greater than 35 percent of the individuals in the action area would enter the water during the 4- to 6-hr duration of pile driving/removal. That is, assuming 65 percent of animals are hauled-out at a given time, it is possible that some animals may enter and exit the water during those four hours. Thus, while it is possible that no more than 35 percent of animals will be in the water at any given moment during pile driving, it is also possible that somewhat more than 35 percent could potentially be exposed to underwater sound from pile driving during those 4 hours. However, no data exists regarding fine-scale harbor seal movements within the project area on time durations of less than a day, thus precluding an assessment of ingress or egress of different animals through the action area. As such, it is impossible, given available data, to determine exactly what number of individuals above 35 percent may potentially be exposed to underwater sound. There is no existing data that would indicate that the proportion of individuals entering the water during pile driving would be dramatically larger than 35 percent; thus, the MMC's suggestion that 100 percent of the population be used to estimate density would likely result in a gross exaggeration of potential take.

In addition, there are a number of factors indicating that a density derived from 35 percent of the population may not result in an underestimate of take. Hauled-out harbor seals are necessarily at haul-outs, and no harbor seal haul-outs are located within or near the action area. Harbor seals observed in the vicinity of the NBKB shoreline are rarely hauled-out (for example, in formal surveys during 2007–2008, approximately 86 percent of observed seals were swimming), and when hauled-out, they do so opportunistically (i.e., on floating booms rather than established haul-outs). Harbor seals are typically unsuited for using manmade haul-outs at NBKB, which are used by sea lions. Primary harbor seal haul-outs in Hood Canal are located at significant distance (20 km or more) from the action area in Dabob Bay or further south (see Figure 4–1 in the Navy's application), meaning that animals casually entering the water from haul-outs or flushing due to some disturbance would not automatically be exposed to underwater sound; rather, only those animals embarking on foraging trips and entering the action area may be exposed. Moreover, because the Navy is be unable to determine from field observations whether the same or different individuals are being exposed, each observation will be recorded as a new take, although an individual theoretically would only be considered as taken once in a given day. If the estimated take is an underestimate (i.e., if authorized take is exceeded), there is the possibility that the Navy's action may need to be halted. Lastly, no alternative information or methodology was presented or proposed during the public comment period that would lead NMFS to believe that the MMC's recommendation would not lead to a gross exaggeration of potential take, or that would present a better estimate than that contained herein.

Comment 5: Because the Navy did not request authorization for take of harbor seals resulting from exposure to airborne sound, the MMC recommends that NMFS require the Navy to shut down activities whenever a harbor seal is within the in-air Level B harassment zone (i.e., within a radius of 358 m).

Response: The Navy's waterfront surveys have found that it is extremely rare for harbor seals to haul out in the vicinity of the test pile project area. While in-water sightings are fairly common, even temporary, opportunistic haul-out locations are limited within the acoustic zone of influence for airborne sound (maximum of 358 m) estimated for the pile replacement project. Harbor seal haul-out area can include intertidal or sub-tidal rock outcrops, sandbars, sandy beaches, peat banks in salt marshes, and manmade structures such as log booms, docks, and recreational floats. The lack of any of these suitable haul-out habitats in the immediate vicinity of the test pile project area makes it extremely unlikely that a harbor seal would be hauled out in range of sounds that could cause acoustic disturbance. The only structures within the largest airborne zone of influence (358 m) are the current Explosive Handling Wharf (EHW–1) and Marginal Wharf. Both of these structures are elevated more than sixteen feet above the Mean Higher High Water (MHHW) mark, so there is no opportunity for harbor seals to haul out on these structures, even during the highest tides. Secondly, while a small intertidal/shoreline zone is present between these structures, it does not represent favorable haul-out habitat for the harbor seal. The shoreline located between the current EHW–1 and Marginal Wharf is extremely narrow, and is backed by a steep cliff face that is heavily vegetated with trees. Additionally, any portion of the intertidal zone that may be exposed at low tide is also vegetated with eelgrass beds and macroalgae, neither of which is known haul-out attractant for harbor seals. All harbor seals that are found swimming or diving within 358 m of the pile location would be considered to be taken by underwater sounds from pile driving activities; thus, there is no additional need to shutdown any time a harbor seal is within the airborne Level B harassment zone.

Comment 6: The MMC recommends that NMFS encourage the Navy to consult with experts at the National Marine Mammal Laboratory to review and revise the Navy's survey methods as needed to make them scientifically sound.

Response: The Navy has consulted with marine science experts in the past in the development of surveys and will continue to do so, including outreach with the National Marine Mammal Laboratory. NMFS is supportive of the Navy's effort to improve the strength of their survey design.

Comment 7: The MMC recommends that NMFS require the Navy to record distances to and behavioral observations of animals sighted within the entirety of the in-water Level B harassment zone that would be established for vibratory pile driving and removal activities.

Response: All shutdown and buffer zones will initially be based on predicted distances from the source, as described in the Navy's application. The size of the shutdown and buffer zones will be adjusted accordingly based on in-situ empirically measured received sound pressure levels. The 120-dB disturbance criterion for vibratory pile driving predicts an affected area of 40.3 km^2. Due to financial and personnel constraints, it is impracticable to

effectively monitor such a large area. However, the 120-dB zone will be adjusted as necessary based on the results of in-situ hydroacoustic monitoring, and it is possible that the true 120-dB zone may be of a size that is practicable to monitor. Nevertheless, the Navy has committed to monitoring a minimum zone of 2,400 m, which corresponds to the width of the Hood Canal at the project site. This distance subsumes the next largest buffer zone (the 501 m, 90-dB harassment zone for airborne sound from impact pile driving). Observers will also be placed in additional locations within the 40.3 km^2 vibratory disturbance zone, as indicated in the Navy's Marine Mammal Monitoring Plan. Sightings occurring in the area outside of the 2,400 m zone—the maximum zone in which it is practicable to effectively monitor—will still be recorded and noted as a take. However, it would not be possible to state with certainty that all takes were recorded, and fine-scale behavioral observations may not be possible. In addition, the proposed monitoring methodology is consistent with other actions analyzed by NMFS that involve prohibitively large harassment zones. These include seismic air gun and sonar activities, in which visual monitoring is only practicable for an exclusion zone corresponding to the injury thresholds and precise quantification of impacts to marine mammals within the behavioral harassment zones could not be empirically verified through visual observation, but was estimated by modeling.

Comment 8: The MMC recommends that NMFS complete an analysis of the impact of the proposed activities together with the cumulative impacts of all the other pertinent risk factors affecting marine mammals in the Hood Canal area, including the Navy's concurrent wharf repair project, before issuing the authorization.

Response: The pile replacement project and the test pile program overlap somewhat spatially and temporally. Spatially, the two areas are located adjacent to one another. There could be an overlap in their buffer zones (Level B harassment zones) but not for their exclusion zones (Level A harassment or injury zones) when the test piles closest to EHW–1 are installed and removed. Temporal overlap will occur as both projects will operate with a work window from July 16 through October 31. However, for the test pile program impact pile driving will cease no later than October 14, and for pile replacement at EHW–1, impact pile driving will cease no later than September 30.

The injury zones are not large enough to overlap spatially, and the Navy has agreed that no simultaneous impact driving will occur, in order to ensure that the combined energy of two impact rigs operating at once would not increase the potential injury zones. With regard to impact pile driving, EHW–1 is limited to impact pile driving only five piles per year, with a maximum of one pile driven per day and a maximum of 15 minutes of impact driving per pile. The test pile program is anticipated to require proofing for 18 test piles, although additional impact driving may be required should any of the piles fail to reach the necessary embedment depth with vibratory driving. Any impact pile driving during the test pile program would be limited to 100 strikes or 15 minutes per day.

No limitation has been placed upon vibratory pile installation and removal, as such limitation would significantly extend the length of each project's timeline and would result in a longer period of potential exposure for marine mammals in the Hood Canal. Vibratory pile drivers produce significantly lower initial sound pressure levels than impact hammers and are not known to cause injury to marine mammals. The simultaneous use of two vibratory drivers with similar sound outputs would likely increase initial sound pressure levels by approximately three decibels, thus increasing the potential area encompassed by the 120-dB buffer zone (Level B harassment zone) from a modeled 100,000 m to 158,489 m, using the practical spreading loss model. As described in NMFS' notice of proposed IHA, these distances assume a field free of obstruction. However, Hood Canal does not represent open water conditions, and sound attenuates upon encountering land masses or bends in the canal. As a result, neither hypothetical area of potential behavioral effects is possible in the project area. The actual distances to the 120-dB behavioral disturbance threshold for vibratory pile driving will be significantly reduced due to the irregular contours of the waterfront, narrowness of the canal, and maximum fetch (furthest distance sound waves travel without obstruction) at the project area. Based on these factors, the concurrent use of vibratory hammers at both project locations will not result in any actual increase in the area encompassed by the 120-dB criteria.

The Navy and NMFS have considered the potential overlap of these projects and the resulting effects that may occur, and have addressed these issues in the cumulative impacts analyses contained within their respective NEPA documents for these projects.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species that may be harassed incidental to estuary management activities are the harbor seal, California sea lion, killer whale, Dall's porpoise, and harbor porpoise. None of these species are listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. NMFS presented a more detailed discussion of the status of these stocks and their occurrence in the action area in the notice of the proposed IHA (76 FR 6406; February 4, 2011).

Potential Effects of the Activity on Marine Mammals

NMFS has determined that pile driving, as outlined in the project description, has the potential to result in behavioral harassment of California sea lions, harbor seals, harbor porpoises, Dall's porpoises, and killer whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. Pile driving could potentially harass those pinnipeds that are in the waters adjoining the project site.

Based on the analysis contained in NMFS' notice of proposed IHA, it is unlikely that this project will result in temporary or permanent hearing impairment or non-auditory physical or physiological effects for any marine mammal. Because this project involves driving a small number of piles, with limited use of an impact driver, and will occur in a small area for limited duration, effects to marine mammals are likely to be limited to behavioral harassment. The planned mitigation measures for this project (see the "Mitigation" section later in this document) are designed to detect marine mammals occurring near the pile driving to avoid exposing them to sound pulses that might, in theory, cause hearing impairment. In addition, many cetaceans are likely to show some avoidance of the area where received levels of pile driving sound are high enough that hearing impairment could potentially occur. In those cases, the avoidance responses of the animals themselves will reduce or (most likely) avoid any possibility of hearing impairment.

The effects of behavioral disturbance resulting from this project are difficult to predict, as behavioral responses to sound are highly variable and context specific. A number of factors may influence an animal's response to noise,

including its previous experience, its auditory sensitivity, its biological and social status (including age and sex), and its behavioral state and activity at the time of exposure. These behavioral changes may include changes in duration of surfacing and dives or moving direction and/or speed; changes in vocalization; visible startle response or aggressive behavior; avoidance of areas where noise sources are located; and/or flight responses. Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance. Since pile driving will likely only occur for a few hours a day, over a short period of time, it is unlikely to result in permanent displacement from the area. Temporary impacts from pile driving activities could be experienced by individual marine mammals, but would not be likely to cause population level impacts, or affect any individual's long-term fitness.

The three cetacean species are rare in the project area, and, if present, numbers will likely be in single digits. While pinniped numbers will likely be greater, there are several factors indicating that these animals may only experience minor effects from behavioral disturbance. No haul-out areas are located in the immediate vicinity of the project site. California sea lions haul-out on manmade structures along the NBKB waterfront, typically over a mile from the project site. Harbor seals, though present in the Hood Canal year-round, have primary haul-outs even further away, in Dabob Bay to the west and at points further south.

Anticipated Effects on Habitat

NMFS provided a detailed discussion of the potential effects of this action on marine mammal habitat in the notice of the proposed IHA (76 FR 6406; February 4, 2011). The pile driving activities at NBKB will not result in permanent impacts to habitats used directly by marine mammals, such as haul-out sites, but may have potential short-term impacts to food sources such as forage fish and salmonids. There are no rookeries or major haul-out sites within 10 km (6.2 mi), foraging hotspots, or other ocean bottom structure of significant biological importance to marine mammals that may be present in the marine waters in the vicinity of the project area. Therefore, the main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, as discussed previously in this document. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (i.e., fish) near NBKB and minor impacts to the immediate substrate during installation and removal of piles during the pile replacement project.

Sound pressure levels of sufficient strength have been known to cause injury to fish and fish mortality (CALTRANS 2001; Longmuir and Lively 2001). However, due to mitigation measures in place to reduce impacts to ESA-listed fish—notably including adherence to the July 16–October 31 work window—the most likely impact to fish from pile driving activities at the project area will be temporary avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the pile replacement project.

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The Navy has established exclusion and buffer zones (Level A and Level B harassment, respectively), based on modeling described in NMFS' notice of proposed IHA (76 FR 6406; February 4, 2011). The Navy will implement the following measures for these zones:

- The Navy will implement a minimum shutdown zone of 50 m (164 ft) radius around all pile driving and removal activity. Shutdown zones typically include all areas where the underwater SPLs are anticipated to equal or exceed the Level A (injury) harassment criteria for marine mammals (180-dB isopleth for cetaceans; 190-dB isopleth for pinnipeds). In this case, pile driving sounds are expected to attenuate below 180 dB at distances of 16 m or less, but the 50-m shutdown is intended to further avoid the risk of direct interaction between marine mammals and the equipment.
- The buffer zone shall initially be set at a radius of 2,400 m, which is the width of the Hood Canal at the project site. This zone, which would subsume the 160-dB buffer zone, is the maximum area that is practicable for the Navy to monitor. The full 120-dB buffer zone for vibratory pile driving (modeled as radius of 15,849 m, but reduced to 40.3 km^2 when attenuation due to landmasses is accounted for) is so large as to make monitoring impracticable. Additional observers will be present in this zone, and any sighted animals would be recorded as takes, but it is impossible to guarantee that all animals will be observed or to make observations of fine-scale behavioral reactions to sound throughout this zone. The 2,400 m (1,644 ft) zone may be adjusted according to empirical, site-specific data after the project begins. Additional buffer zone distances, including the 501 m zone for airborne acoustic harassment (harbor seals), and the 160-dB zone for underwater sound (342 m), may also be adjusted based upon the results of hydroacoustic monitoring.
- The shutdown and buffer zones will be monitored throughout the time required to drive a pile. If a marine mammal is observed entering the buffer zone, a take will be recorded and behaviors documented. However, that pile segment will be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities will be halted.
- All buffer and shutdown zones will initially be based on the distances from the source that are predicted for each threshold level. However, in-situ acoustic monitoring will be utilized to determine the actual distances to these threshold zones, and the size of the shutdown and buffer zones will be adjusted accordingly based on received sound pressure levels.

Monitoring will take place from 30 minutes prior to initiation through 30 minutes post-completion of pile driving activities. The following additional measures will apply to visual monitoring:

- Monitoring will be conducted by qualified observers. A trained observer will be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shut-down or delay procedures when applicable by calling for the shut-down to the hammer operator.
- Prior to the start of pile driving activity, the shutdown and safety zones will be monitored for thirty minutes to ensure that they are clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the buffer zone (i.e., must leave of their own volition) and their behavior will be monitored and documented.

• If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, pile driving will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or thirty minutes have passed without re-detection of the animal.

The following additional measures will be implemented:

• Sound attenuation devices will be utilized during all impact pile driving operations.

• The Navy will use soft-start techniques (ramp-up and dry fire) recommended by NMFS for impact and vibratory pile driving. The soft-start requires contractors to initiate noise from vibratory hammers for 15 seconds at reduced energy followed by a 1-minute waiting period. This procedure will be repeated two additional times. For impact driving, contractors will be required to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three strike sets. No soft-start procedures exist for pneumatic chipping hammers.

• Pile driving will only be conducted during daylight hours.

• For in-water heavy machinery work other than pile driving (if any), if a marine mammal comes within 50 m (164 ft), operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

NMFS has carefully evaluated the mitigation measures described previously and considered their effectiveness in past implementation to determine whether they are likely to effect the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures includes consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

It is unlikely that injury, serious injury, or mortality to marine mammals would result from any actions undertaken during the pile replacement project. The impacts of the project will likely be limited to temporary behavioral disturbance. However, to reduce the amount and degree of behavioral disturbance that occurs, NMFS and the Navy have developed the previously described mitigation measures. These are designed to limit the numbers of marine mammals that are exposed to underwater sound, by reducing the intensity of sound entering the environment, limiting the amount of impact pile driving, and limiting the duration of all driving, and to prevent any individual from being exposed to levels of sound that could result in injury. Based upon experience from previous pile driving projects and the analysis contained in NMFS' notice of proposed IHA and in this document, NMFS has determined that these mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

The Navy will conduct acoustic monitoring for impact driving of steel piles in order to determine the actual distances to the 190-, 180-, and 160-dB (re 1 μPa rms) isopleths and to determine the relative effectiveness of the bubble curtain system at attenuating noise underwater. The Navy will also conduct acoustic monitoring for vibratory pile driving in order to determine the actual distance to the 120-dB isopleth for behavioral harassment relative to background levels. Acoustic monitoring will occur for each type of pile installation and removal methodology, including impact and vibratory pile driving and pneumatic chipping. The Navy's hydroacoustic monitoring plan (see **ADDRESSES**) addresses collection of data for both underwater and airborne sounds from the pile replacement project, and is discussed in greater detail in NMFS' notice of proposed IHA (76 FR 6406; February 4, 2011).

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors. NMFS requires that the observers have no other construction related tasks while conducting monitoring. Details regarding monitoring protocols are available in the Navy's marine mammal monitoring plan, and were discussed in greater detail in NMFS' notice of proposed IHA (76 FR 6406; February 4, 2011). The Navy will note in their behavioral observations whether an animal remains in the project area following a Level B taking (which would not require cessation of activity). This information will ideally make it possible to determine whether individuals are taken (within the same day) by one or more types of pile driving (*i.e.,* impact and vibratory). NMFS requires that, at a minimum, the following information be collected on the sighting forms:

• Date and time that pile driving begins or ends;

• Construction activities occurring during each observation period;

• Weather parameters identified in the acoustic monitoring (e.g., wind, humidity, temperature);

• Tide state and water currents;

• Visibility;

• Species, numbers, and, if possible, sex and age class of marine mammals;

• Marine mammal behavior patterns observed, including bearing and direction of travel, and if possible, the correlation to sound pressure levels;

• Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

• Locations of all marine mammal observations; and

• Other human activity in the area.

A draft report would be submitted to NMFS within 45 days of the completion of acoustic measurements and marine mammal monitoring. The results would be summarized in graphical form and include summary statistics and time histories of impact sound values for each pile. A final report would be prepared and submitted to NMFS within thirty days following receipt of comments on the draft report from NMFS. At a minimum, the report shall include:

• Size and type of piles;

• A detailed description of the sound attenuation device, including design specifications;

• The impact or vibratory hammer force used to drive and extract the piles;

• A description of the monitoring equipment;

• The distance between hydrophone(s) and pile;

• The depth of the hydrophone(s);

- The depth of water in which the pile was driven;
- The depth into the substrate that the pile was driven;
- The physical characteristics of the bottom substrate into which the piles were driven;
- The ranges and means for peak, rms, and SELs for each pile;
- The results of the acoustic measurements, including the frequency spectrum, peak and rms SPLs, and single-strike and cumulative SEL with and without the attenuation system;
- The results of the airborne noise measurements including dBA and unweighted levels;
- A description of any observable marine mammal behavior in the immediate area and, if possible, the correlation to underwater sound levels occurring at that time;
- Results, including the detectability of marine mammals, species and numbers observed, sighting rates and distances, behavioral reactions within and outside of safety zones; and
- A refined take estimate based on the number of marine mammals observed in the safety and buffer zones. This may be reported as one or both of the following: a rate of take (number of marine mammals per hour), or take based on density (number of individuals within the area).

Estimated Take by Incidental Harassment

NMFS is authorizing the Navy to take harbor seals, California sea lions, killer whales, Dall's porpoises, and harbor porpoises, by Level B harassment only, incidental to pile driving and removal activities. These activities are expected to harass marine mammals present in the vicinity of the project site through behavioral disturbance only. Estimates of the number of marine mammals that may be harassed by the activities is based upon the estimated densities of each species in the area, the modeled areas of ensonification to various thresholds, and the estimated number of pile driving days. Table 1 details the total number of authorized takes. Methodology of take estimation was discussed in detail in NMFS' notice of proposed IHA (76 FR 6406; February 4, 2011).

TABLE 1—AUTHORIZED NUMBERS OF INCIDENTAL MARINE MAMMAL TAKES

Species	Density	Underwater			Airborne	Total (percent of stock or population)
		Impact injury threshold	Impact disturbance threshold (160 dB)	Vibratory disturbance threshold (120 dB)	Impact and vibratory disturbance threshold	
California sea lion	0.410	0	5	553	0	558 (0.2)
Harbor seal	1.31	0	5	1,761	0	1,766 (12.1)
Killer whale	0.038	0	9	49	N/A	58 (18.5)
Dall's porpoise	0.043	0	1	70	N/A	71 (0.1)
Harbor porpoise	0.011	0	0	35	N/A	35 (0.3)
Total	0	20	2,468	0	2,488	

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In determining whether or not authorized incidental take will have a negligible impact on affected species stocks, NMFS considers a number of criteria regarding the impact of the proposed action, including the number, nature, intensity, and duration of Level B harassment take that may occur. Although the Navy's pile driving activities may harass marine mammals occurring in the project area, impacts are occurring to small, localized groups of animals for short durations or to individual cetaceans that may swim through the area. No permanent haul-outs or breeding or pupping areas are located within the action area. No mortality or injury is anticipated, nor will the action result in long-term impacts such as permanent abandonment of haul-outs. No impacts are expected at the population or stock level. No pinniped stocks known from the action area are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. The number of animals authorized to be taken for each species of pinnipeds can be considered small relative to the population size. Please see Table 1 for these numbers.

Based on the foregoing analysis, behavioral disturbance to marine mammals in the Hood Canal will be of low intensity and limited duration. To ensure minimal disturbance, the Navy will implement the mitigation measures described previously, which NMFS has determined will serve as the means for effecting the least practicable adverse effect on marine mammals stocks or populations and their habitat. NMFS finds that the Navy's pile driving activities will result in the incidental take of small numbers of marine mammals, and that the authorized number of takes will have no more than a negligible impact on the affected species and stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

There are no ESA-listed marine mammals found in the action area during the project's in-water work timeframe; therefore, no consultation under the ESA is required by NMFS.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, the Navy prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the pile replacement project. NMFS has adopted that EA in order to assess the impacts to the human environment of issuance of an IHA to the Navy. NMFS signed a Finding of No Significant Impact

(FONSI) on May 17, 2011. The Navy's EA and NMFS' FONSI for this action are available for review at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Determinations

NMFS has determined that the impact of conducting the specific activities described in this notice and in the IHA request in the specific geographic region in the Hood Canal, Washington may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this action.

Authorization

As a result of these determinations, NMFS has issued an IHA to the Navy to conduct a pile replacement project in the Hood Canal from the period of July 16, 2011, through July 15, 2012, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 17, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–12769 Filed 5–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Federal Need Analysis Methodology for the 2012–2013 Award Year

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of revision of the Federal Need Analysis Methodology for the 2012–2013 award year.

Overview Information:

[CFDA Numbers 84.063; 84.038; 84.033; 84.007; 84.268; 84.379].

Federal Need Analysis Methodology for the 2012–2013 award year; Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, William D. Ford Federal Direct Loan, and TEACH Grant Programs.

SUMMARY: The Secretary announces the annual updates to the tables that will be used in the statutory "Federal Need Analysis Methodology" to determine a student's expected family contribution (EFC) for award year 2012–2013 for the student financial aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). An EFC is the amount that a student and his or her family may reasonably be expected to contribute toward the student's postsecondary educational costs for purposes of determining financial aid eligibility. The Title IV programs include the Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, William D. Ford Federal Direct Loan, and the Teach Grant Programs (Title IV, HEA Programs).

FOR FURTHER INFORMATION CONTACT: Ms. Marya Dennis, Management and Program Analyst, U.S. Department of Education, room 63G2, Union Center Plaza, 830 First Street, NE., Washington, DC 20202–5454. *Telephone:* (202) 377–3385.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Part F of Title IV of the HEA specifies the criteria, data elements, calculations, and tables used in the Federal Need Analysis Methodology EFC calculations.

Section 478 of part F of title IV of the HEA requires the Secretary to adjust four of the tables—the Income Protection Allowance, the Adjusted Net Worth of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment Schedules and Rates—each award year for general price inflation. The changes are based, in general, upon increases in the Consumer Price Index.

For award year 2012–2013, the Secretary is charged with updating the income protection allowance for parents of dependent students, adjusted net worth of a business or farm, and the assessment schedules and rates to account for inflation that took place between December 2010 and December 2011. However, because the Secretary must publish these tables before December 2011, the increases in the tables must be based upon a percentage equal to the estimated percentage increase in the Consumer Price Index for All Urban Consumers (CPI–U) for 2011. The Secretary must also account for any misestimation of inflation for the prior year. In developing the table values for the 2011–2012 award year, the Secretary assumed a 1.2 percent increase in the CPI–U for the period December 2009 through December 2010. Actual inflation for this time period was 1.4 percent. The Secretary estimates that the increase in the CPI–U for the period December 2010 through December 2011 will be 0.8 percent. Additionally, section 601 of the College Cost Reduction and Access Act of 2007 (CCRAA, Pub. L. 110–84) amended sections 475 through 478 of the HEA by updating the procedures for determining the income protection allowance for dependent students, as well as the income protection allowance tables for both independent students with dependents other than a spouse, and independent students without dependents other than a spouse. As amended by the CCRAA, the HEA now includes new 2012–2013 award year values for these income protection allowances. The updated tables are in sections 1, 2, and 4 of this notice.

The Secretary must also revise, for each award year, the education savings and asset protection allowances as provided for in section 478(d) of the HEA. The Education Savings and Asset Protection Allowance table for award year 2012–2013 has been updated in section 3 of this notice.

Section 478(h) of the HEA also requires the Secretary to increase the amount specified for the Employment Expense Allowance, adjusted for inflation. This calculation is based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-worker family compared to a one-worker family for food away from home, apparel, transportation, and household furnishings and operations. The Employment Expense Allowance table for award year 2012–2013 has been updated in section 5 of this notice.

The HEA provides for the following annual updates:

1. *Income Protection Allowance (IPA).* This allowance is the amount of living expenses associated with the maintenance of an individual or family that may be offset against the family's income. It varies by family size. The IPA for the dependent student is $6,000. The IPAs for parents of dependent students for award year 2012–2013 are:

The IPAs for independent students with dependents other than a spouse for award year 2012–13 are:

PARENTS OF DEPENDENT STUDENTS

Family size	Number in college				
	1	2	3	4	5
2	$16,390	$13,590	.....	.....	.....
3	20,410	17,620	$14,820	.....	.....
4	25,210	22,400	19,620	$16,810	.....
5	29,740	26,940	24,150	21,340	$18,560
6	34,790	31,990	29,200	26,390	23,600

For each additional family member add $3,930.
For each additional college student subtract $2,790.

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

Family size	Number in college				
	1	2	3	4	5
2	$23,630	$19,590	.....	.....	.....
3	29,420	25,400	$21,360	.....	.....
4	36,330	32,300	28,280	$24,230	.....
5	42,870	38,820	34,800	30,770	$26,750
6	50,130	46,100	42,090	38,030	34,020

For each additional family member add $5,660.
For each additional college student subtract $4,020.

The IPAs for single independent students and independent students without dependents other than a spouse for award year 2012–13 are:

Marital status	Number in college	IPA
Single	1	$9,330
Married	2	9,330
Married	1	14,960

2. *Adjusted Net Worth (NW) of a Business or Farm.* A portion of the full net worth (assets less debts) of a business or farm is excluded from the calculation of an expected contribution because—(1) The income produced from these assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for parents of dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

If the Net Worth (NW) of a business or farm is—	Then the Adjusted Net Worth is—
Less than $1	$0
$1 to $115,000	$0 + 40% of NW
$115,00 to $350,000	$46,000 + 50% of NW over $115,000
$350,001 to $585,000	$163,500 + 60% of NW over $350,000
$585,001 or more	$304,500 + 100% of NW over $585,000

3. *Education Savings and Asset Protection Allowance.* This allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables—one for parents of dependent students, one for independent students without dependents other than a spouse, and one for independent students with dependents other than a spouse.

DEPENDENT STUDENTS

If the age of the older parent is	And they are	
	Married	Single
	Then the education savings and asset protection allowance is—	
25 or less	$0	$0
26	2,400	800
27	4,900	1,700
28	7,300	2,500
29	9,700	3,400
30	12,200	4,200
31	14,600	5,100
32	17,000	5,900
33	19,500	6,800
34	21,900	7,600
35	24,300	8,500
36	26,800	9,300
37	29,200	10,200

DEPENDENT STUDENTS—Continued

If the age of the older parent is	And they are	
	Married	Single
38	31,600	11,000
39	34,100	11,900
40	36,500	12,700
41	37,500	13,000
42	38,400	13,300
43	39,300	13,600
44	40,300	13,900
45	41,300	14,200
46	42,300	14,500
47	43,400	14,900
48	44,400	15,200
49	45,500	15,600
50	46,600	16,000
51	48,000	16,300
52	49,200	16,700
53	50,700	17,100
54	51,900	17,500
55	53,400	17,900
56	54,700	18,500
57	56,300	18,900
58	58,000	19,400
59	59,700	19,900
60	61,400	20,400
61	63,100	20,900
62	65,000	21,500
63	66,800	22,100
64	68,700	22,700
65 or older	71,000	23,300

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is	And they are	
	Married	Single
	Then the education savings and asset protection allowance is—	
25 or less	$0	$0
26	2,400	800
27	4,900	1,700
28	7,300	2,500
29	9,700	3,400
30	12,200	4,200
31	14,600	5,100
32	17,000	5,900
33	19,500	6,800
34	21,900	7,600
35	24,300	8,500
36	26,800	9,300
37	29,200	10,200
38	31,600	11,000
39	34,100	11,900
40	36,500	12,700
41	37,500	13,000
42	38,400	13,300
43	39,300	13,600
44	40,300	13,900
45	41,300	14,200
46	42,300	14,500
47	43,400	14,900
48	44,400	15,200
49	45,500	15,600
50	46,600	16,000
51	48,000	16,300
52	49,200	16,700
53	50,700	17,100
54	51,900	17,500
55	53,400	17,900
56	54,700	18,500
57	56,300	18,900
58	58,000	19,400
59	59,700	19,900
60	61,400	20,400
61	63,100	20,900
62	65,000	21,500
63	66,800	22,100
64	68,700	22,700
65 or older	71,000	23,300

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is	And they are	
	Married	Single
	Then the education savings and asset protection allowance is—	
25 or less	$0	$0
26	2,400	800
27	4,900	1,700
28	7,300	2,500
29	9,700	3,400
30	12,200	4,200
31	14,600	5,100
32	17,000	5,900

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE—Continued

If the age of the student is	And they are	
	Married	Single
33	19,500	6,800
34	21,900	7,600
35	24,300	8,500
36	26,800	9,300
37	29,200	10,200
38	31,600	11,000
39	34,100	11,900
40	36,500	12,700
41	37,500	13,000
42	38,400	13,300
43	39,300	13,600
44	40,300	13,900
45	41,300	14,200
46	42,300	14,500
47	43,400	14,900
48	44,400	15,200
49	45,500	15,600
50	46,600	16,000
51	48,000	16,300
52	49,200	16,700
53	50,700	17,100
54	51,900	17,500
55	53,400	17,900
56	54,700	18,500
57	56,300	18,900
58	58,000	19,400
59	59,700	19,900
60	61,400	20,400
61	63,100	20,900
62	65,000	21,500
63	66,800	22,100
64	68,700	22,700
65 or older	71,000	23,300

4. *Assessment Schedules and Rates.* Two schedules that are subject to updates, one for parents of dependent students and one for independent students with dependents other than a spouse, are used to determine the EFC toward educational expenses from family financial resources. For dependent students, the EFC is derived from an assessment of the parents' adjusted available income (AAI). For independent students with dependents other than a spouse, the EFC is derived from an assessment of the family's AAI. The AAI represents a measure of a family's financial strength, which considers both income and assets.

Parents' contribution for a dependent student is computed according to the following schedule:

If AAI is—	Then the contribution is—
Less than −$3,409	−$750
($3,409) to $14,600	22% of AAI
$14,601 to $18,400	$3,212 + 25% of AAI over $14,600
$18,401 to $22,100	$4,162 + 29% of AAI over $18,400
$22,101 to $25,900	$5,235 + 34% of AAI over $22,100
$25,901 to $29,600	$6,527 + 40% of AAI over $25,900
$29,601 or more	$8,007 + 47% of AAI over $29,600

The contribution for an independent student with dependents other than a spouse is computed according to the following schedule:

If AAI is—	Then the contribution is—
Less than −$3,409	−$750
($3,409) to $14,600	22% of AAI
$14,601 to $18,400	$3,212 + 25% of AAI over $14,600
$18,401 to $22,100	$4,162 + 29% of AAI over $18,400
$22,101 to $25,900	$5,235 + 34% of AAI over $22,100
$25,901 to $29,600	$6,527 + 40% of AAI over $25,900
$29,601 or more	$8,007 + 47% of AAI over $29,600

5. *Employment Expense Allowance.* This allowance for employment-related expenses, which is used for the parents of dependent students and for married independent students, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for a two-worker family compared to a one-worker family for food away from home, apparel, transportation, and household furnishings and operations.

The employment expense allowance for parents of dependent students, married independent students without dependents other than a spouse, and independent students with dependents other than a spouse is the lesser of $3,600 or 35 percent of earned income.

6. *Allowance for State and Other Taxes.* The allowance for State and other taxes protects a portion of the parents' and students' income from being considered available for postsecondary educational expenses. There are four categories for State and other taxes, one each for parents of dependent students, independent students with dependents other than a spouse, dependent students, and independent students without dependents other than a spouse. Section 478(g) of the HEA directs the Secretary to update the tables for State and other taxes after reviewing the Statistics of Income file data maintained by the Internal Revenue Service.

State	Parents of dependents and independents with dependents other than a spouse		Dependents and independents without dependents other than a spouse
	Percent of total income		
	Under $15,000	$15,000 & up	All (%)
Alabama	3	2	2
Alaska	2	1	0
Arizona	5	4	3
Arkansas	4	3	3
California	8	7	5
Colorado	5	4	3
Connecticut	8	7	5
Delaware	5	4	4
District of Columbia	8	7	6
Florida	4	3	1
Georgia	6	5	4
Hawaii	5	4	4
Idaho	5	4	4
Illinois	5	4	2
Indiana	4	3	3
Iowa	5	4	3
Kansas	5	4	3
Kentucky	6	5	4
Louisiana	4	3	2
Maine	6	5	4
Maryland	9	8	6
Massachusetts	7	6	4
Michigan	5	4	3
Minnesota	7	6	5
Mississippi	3	2	2
Missouri	5	4	3
Montana	5	4	3
Nebraska	5	4	3
Nevada	3	2	1
New Hampshire	5	4	1
New Jersey	9	8	5
New Mexico	3	2	2
New York	10	9	7
North Carolina	6	5	4
North Dakota	3	2	1
Ohio	6	5	4
Oklahoma	4	3	3
Oregon	8	7	5
Pennsylvania	6	5	3
Rhode Island	7	6	4
South Carolina	5	4	4
South Dakota	2	1	1
Tennessee	2	1	1
Texas	3	2	1
Utah	5	4	4
Vermont	6	5	3
Virginia	6	5	4
Washington	4	3	1
West Virginia	3	2	3
Wisconsin	8	7	4
Wyoming	2	1	1
Other	3	2	3

Electronic Access to This Document: 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) on the Internet *at the following site: http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: 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 on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Numbers: 84.063 Federal Pell Grant Program; 84.038 Federal Perkins Loan Program; 84.033 Federal Work-Study Programs; 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.268 William D. Ford Federal Direct Loan Program; 84.379 TEACH Grant Program)

Program Authority: 20 U.S.C. 1087rr.

Dated: May 19, 2011.

James Runcie,

Deputy Chief Operating Officer, Federal Student Aid.

[FR Doc. 2011–12812 Filed 5–23–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. *Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before July 25, 2011. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: *Written comments may be sent to:* Eva Auman, GC–63; Department of Energy;1000 Independence Ave, SW.; Washington, DC 20585; *Fax:* 202–586–7373; *E-mail: eva.auman@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Eva Auman, GC–63; Department of Energy; 1000 Independence Ave., SW.; Washington, DC 20585; Fax: 202–586–7373; *E-mail: eva.auman@hq.doe.gov.* The draft collection instrument is available for review at the following Web site: *http://www1.eere.energy.gov/wip/davis-bacon_act.html#ICR_draft collectioninstrument.*

SUPPLEMENTARY INFORMATION: *This information collection request contains:* (1) OMB Control Number 1910–New; (2) *Information Collection Request Title:* Davis-Bacon Semi-annual Labor Compliance Report; (3) *Type of Request:* Regular; (4) *Purpose:* All Federal agencies administering programs subject to Davis-Bacon wage provisions are required by 29 CFR part 5, Section 5.7(b) to submit to the Department of Labor (DOL) a semi-annual compliance and enforcement report. In order for DOE to comply with this reporting requirement, it must collect information from Recipients of Recovery Act funded grants, including state and local agencies; Recovery Act funded Loan and Loan Guarantee Borrowers, DOE direct contractors, and other prime contractors that administer DOE programs subject to Davis-Bacon requirements. DOE will require that such entities complete and submit a Semi-annual Labor Standard Enforcement Report each six months; (5) *Annual Estimated Number of Respondents:* 2,400; (6) *Annual Estimated Number of Total Responses:* 4,800; (7) *Annual Estimated Number of Burden Hours:* 9,600; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: $0.

Statutory Authority: All Federal agencies administering programs subject to Davis-Bacon wage provisions are required by 29 CFR part 5, Section 5.7(b) to submit to the Department of Labor (DOL) a semi-annual compliance and enforcement report. In order for DOE to comply with this reporting requirement, it must collect information from Recipients of Recovery Act funded grants, including state and local agencies; Recovery Act funded Loan and Loan Guarantee Borrowers, DOE direct contractors, and other prime contractors that administer DOE programs subject to Davis-Bacon requirements.

Issued in Washington, DC, on May 16, 2011.

LeAnn M. Oliver,

Program Manager, Office of Weatherization and Intergovernmental Program, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–12725 Filed 5–23–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995), intends to extend for three years, an information collection request with the Office of Management and Budget (OMB). *Comments are invited on:* (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before July 25, 2011. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Benjamin Goldstein, Buy American Coordinator, Office of Energy Efficiency and Renewable Energy (EERE), Department of Energy, 1000 Independence Avenue, SW., Mailstop EE–2K, Washington, DC 20585 or by e-mail at *BuyAmerican@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Benjamin Goldstein, Buy American Coordinator, Office of Energy Efficiency and Renewable Energy (EERE), Department of Energy, 1000 Independence Avenue, SW., Mailstop EE–2K, Washington, DC 20585 or by e-mail at *BuyAmerican@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: *This information collection request contains:* (1) OMB No. 1019–5152 (2) *Information Collection Request Title:* Request for Waiver of the Recovery Act Buy American provision: Domestic Nonavailability Exception; (3) *Type of Review:* Renewal; (4) *Purpose:* This information collection request relates to the Recovery Act's Buy American requirements. The request provides a standardized and streamlined way for EERE Recovery Act financial assistance recipients to submit domestic nonavailability waiver requests for manufactured goods they intend to purchase. The waiver template allows EERE to efficiently process the waiver requests and determine whether domestically manufactured alternatives exist. This request was originally approved on an emergency basis, which expired on December 31, 2010. EERE expects to continue receiving waiver requests beyond this date and therefore seeks an extension on this information collection request for three years. (5) *Annual Estimated Number of Respondents:* 200; (6) *Annual Estimated*

Number of Total Responses: 200; (7) *Annual Estimated Number of Burden Hours:* 200; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* 0.

Statutory Authority: Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act; Pub. L. 111–5).

Issued in Washington, DC, on April 15, 2011.

Henry Kelly,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–12718 Filed 5–23–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Limited Public Interest Waiver Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice of Limited Waiver.

SUMMARY: The U.S. Department of Energy (DOE) is hereby granting a limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(1) (public interest waiver), with respect to section 1605 of the Recovery Act of 2009 (the Buy American provision) for the Golden Triangle Regional Solid Waste Management Authority (GTR) landfill gas to energy project, funded in part under a sub-award (AR060–GT11–0111–0001) from the Mississippi State Energy Office, recipient of EECBG Award EE0000763.

DATES: Effective April 15, 2011.

FOR FURTHER INFORMATION CONTACT: Benjamin Goldstein, Recovery Act Buy American Coordinator, Weatherization and Intergovernmental Program, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, *buyamerican@ee.doe.gov,* Department of Energy, 1000 Independence Avenue SW., Mailstop EE–2K, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: This waiver applies only to this project for the purchase of a GE Jenbacher JMC 320 gas reciprocating engine manufactured in Austria.

Section 1605 of the American Recovery and Reinvestment Act of 2009, (Pub. L. 111–5), prohibits use of recovery funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. This prohibition applies when any part of the project is paid for with Recovery Act funds.

The landfill gas to energy project is funded, in part, by sub-award AR060–GT11–0111–0001 in the amount of $310,000.00 from the Mississippi State Energy Office, recipient of EECBG Award EE0000763. Because this grant funds a portion of the project cost, all manufactured goods used in the project are subject to the Buy American Provisions—even if separate (non-federal) funds are used to purchase those items.

Specifically, this public interest determination waives the Buy American requirements for the Austrian made GE Jenbacher JMC 320 gas reciprocating engine being used in the landfill gas to energy project of the Golden Triangle Regional Solid Waste Management Authority (GTR). GTR had already entered into an agreement to purchase this item with non-federal funds before ARRA funds became available. And although ARRA funds will now be used in the project as a whole (the project has a total cost of approximately $2 million dollars), those funds will not be used to purchase the GE Jenbacher JMC 320 gas reciprocating engine or any other foreign goods.

The GE Jenbacher JMC 320 gas reciprocating engine is only one manufactured good being used in the GTR landfill gas to energy project. This project also includes an American manufactured treatment skid, valued at approximately $470,000 dollars and the overall construction of the facility, valued at approximately $700,000. All manufactured goods, iron and steel that will be used in the project, with the exception of the GE Jenbacher JMC 320 gas reciprocating engine, will remain subject to the Buy American Provisions of the Recovery Act. No ARRA funds will be used towards the purchase of the GE Jenbacher JMC 320 gas reciprocating engine.

In September of 2010, GTR entered into a Generation Partners Agreement (GPA) with the Tennessee Valley Authority (TVA) for a landfill gas to energy project. Generation Partners is a TVA renewable energy initiative that provides technical support and incentives for the installation of renewable generation facilities. This GPA pays GTR the retail price of local electricity plus $0.03 per kilowatt-hour for renewable energy. This GPA was awarded as part of GTR's application under the TVA Green Power Partners Program. This GPA is extremely aggressive for this region of the United States, where renewable energy projects are generally negotiated at avoided cost levels. As part of the TVA Green Power Partners Program GPA contract, GTR is required to have the renewable energy system operational within 12 months of the signed GPA.

In October of 2010, pursuant to the GPA with TVA, GTR selected and contracted with Nixon Energy in to purchase a GE Jenbacher JMC 320 gas reciprocating engine for approximately $870,000. The contract language signed between GTR and Nixon Energy states that cancellation of the contract would require GTR to pay the entire price of the contract to Nixon Energy.

In December of 2010, the GTR landfill gas to energy project was targeted by the Mississippi Department of Environmental Quality and Mississippi Development Authority (MDA) as a potential project to fund with ARRA funds awarded under EERE EECBG Award EE0000763. On January 12th, 2011 a meeting was held, and the MDA determined that the GTR landfill gas to energy project was an appropriate use of award funds.

On January 28, 2011 the award recipient applied for a public interest waiver, to allow the use of the Austrian manufactured GE Jenbacher JMC 320 gas reciprocating engine.

EERE recognizes that there are US manufacturers of generator sets. Had GTR been identified as a potential grant recipient earlier in the procurement process, EERE would have worked with GTR to find a US manufactured generator set that met their needs. In a case where a grantee cannot identify a domestically manufactured good, EERE utilizes its internal experts and its MOU with NIST–MEP to communicate with potential manufacturers and facilitate discussions between grantees and domestic producers.

EERE believes the public interest is best served by supporting projects that create or support jobs in the domestic manufacturing and construction industries while supporting a renewable energy infrastructure. The GTR landfill gas to energy project, with a total value of over $2 million dollars, furthers both of these goals. Because no ARRA funds will be used towards the purchase of the GE Jenbacher JMC 320 gas reciprocating engine, all ARRA funds in the project ($310,000) will be used in a manner consistent with the purposes of the Buy American provisions. In addition, another $860,000 in non-Recovery Act dollars will also be subject to the Buy American provisions, creating and

supporting jobs in the domestic manufacturing and construction industries. It is therefore in the public interest to issue a waiver of the Recovery Act Buy American provisions that allows this project to utilize Recovery Act award funds.

Under the authority of the Recovery Act, section 1605(b)(1), the head of a Federal department or agency may issue a "determination of inapplicability" (a waiver of the Buy American provisions) if the application of section 1605 would be inconsistent with the public interest. On September 17, 2010, the Secretary of Energy re-delegated the authority to make all inapplicability determinations to the Assistant Secretary for Energy Efficiency and Renewable Energy, for EERE Recovery Act projects.

In light of the foregoing, and under the authority of section 1605(b)(1) of Public Law 111–5 and the Re-delegation Order dated September 17, 2010, with respect to Recovery Act projects funded by EERE, on April 29, 2011 the Acting Assistant Secretary issued a "determination of inapplicability" (a waiver under the Recovery Act Buy American provisions) for the purchase of a GE Jenbacher JMC 320 gas reciprocating engine to be used in the Golden Triangle Regional Solid Waste Management Authority (GTR) landfill gas to energy project, sub award AR060–GT11–0111–0001 from the Mississippi State Energy Office, EECBG Award Recipient EE0000763.

Authority: Public Law 111–5, section 1605.

Issued in Washington, DC, on April 29, 2011.

Henry Kelly,

Acting Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy.

[FR Doc. 2011–12721 Filed 5–23–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Nationwide Categorical Waivers Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice of limited waivers.

SUMMARY: The U.S. Department of Energy (DOE) is hereby granting a nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(2), (iron, steel, or the relevant manufactured goods are not produced in the United States at a reasonable cost), with respect to 300 Spanish Red Clay Tiles to be used on the Eagle Pass Library roof, a sub-grantee of the Texas State Energy Office, recipient of EECBG grant EE0000893.

DATES: Effective April 15, 2011.

FOR FURTHER INFORMATION CONTACT: Benjamin Goldstein, Energy Technology Program Specialist, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, Department of Energy, 1000 Independence Avenue, SW., Mailstop EE–2K, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: Under the authority of Recovery Act, Public Law 111–5, section 1605(b)(2), and its implementing requirements at 2 CFR 176.80(a)(2), the head of a Federal department or agency may issue a "determination of inapplicability" (a waiver of the Buy American provision) if the cost of domestic iron, steel, or relevant manufactured goods will increase the cost of the overall project by more than 25 percent. On September 17, 2010, the Secretary of Energy delegated the authority to make all inapplicability determinations to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act. Pursuant to this delegation the Assistant Secretary, EERE, has concluded that Spanish Red Clay Tiles needed for the Eagle Pass Library Roofing project that are domestically manufactured will increase the cost of the overall project by more than 25 percent, and thus the 6300 Spanish Red Clay Tiles to be used in this project qualify for the "unreasonable cost" waiver determination.

EERE has developed a robust process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver of the Recovery Act Buy American provision. This process involves a close collaboration with the United States Department of Commerce National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), in order to scour the domestic manufacturing landscape in search of producers before making any nonavailability or unreasonable cost determinations.

The NIST MEP has 59 regional centers with substantial knowledge of, and connections to, the domestic manufacturing sector. MEP uses their regional centers to 'scout' for current or potential manufacturers of the product(s) submitted in a waiver request. In the course of this interagency collaboration, MEP has been able to find exact or partial matches for manufactured goods that EERE grantees had been unable to locate. As a result, in those cases, EERE was able to work with the grantees to procure American-made products rather than granting a waiver. Upon receipt of completed waiver requests for the product in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the NIST MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers. In addition to the MEP collaboration outlined above, the EERE Buy American Coordinator worked with labor unions, trade associations and other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for the Spanish Red Clay Tiles contained in this waiver. EERE also conducted significant amounts of independent research to supplement MEP's scouting efforts.

As a result of EERE's efforts and MEP's scouting process, quotes were obtained from four (4) domestic manufacturers to produce this item. Those quotes are reflected in the prices cited infra, and support the finding that this item, if purchased domestically, will increase the total project cost by more than 25%. This "unreasonable cost" waiver is for Spanish Red Clay Tiles to replace a 100-year-old Spanish Tile roof on the Eagle Pass Library in Eagle Pass Texas (at one time the Eagle Pass Post-Office). The original tile was produced in the city of Piedras Negras, Mexico. The tile is made of clay, and is still made today in the same manner as it was when the library was built 100 years ago.

The tile roof being installed on the Eagle Pass Library building will last 75 years, and be lighter in color than the current roof because of the deterioration and discoloration that has occurred to the existing roof tiles over time. Additionally, it will be installed in a manner to allow air to flow from eave to pinnacle, reflecting heat back into the atmosphere, rather than down into the building itself. Since the tiles are installed individually, rather than in sheets or in overlapping style, the natural airspace around the tiles creates natural ventilation that provides a thermal barrier for heat transfer to the roof deck. This can assist in the movement of the peak load demands by several hours.

Eagle Pass Library is designated as a Recorded Texas Historic Landmark

(RHTL) (under the name Eagle Pass Post Office). RTHLs are at least 50 years old and judged worthy of preservation for both architectural and historical significance. Buildings with this designation display an official Texas historical marker.

It is regulated that RTHLs retain their basic historical integrity and property owners are required to notify the Texas Historic Commission (THC) at least 60 days before beginning a project that will affect the exterior of a RTHL. Notification includes a cover letter describing the scope of work, current overall photographs and close-up photographs of the areas requiring repair; drawings, specifications, and a proposal from a contractor may also be required. Staff responds within 30 days, either allowing work to proceed if it complies with the Standards for Rehabilitation or recommending other alternatives to consider.

Compliance with the Texas Secretary of the Interior's Standards for Rehabilitation (Texas Government Code, Chapter 442, Section 442.006(f)), requires that deteriorated or damaged historic building components be replaced in-kind, that is with matching materials. In the case of the Eagle Pass Post Office/Library, the clay tile roof is a character-defining feature and replacement with matching clay tile is the only material that complies with the Standards. As a result of these Standards the tile on the roof of the Eagle Pass Library must be replaced with like tile. This tile is available from Piedras Negras, Mexico for $1.31 per piece, and the project requires 6300 tiles. The prices quoted from domestic manufacturers who could produce the equivalent red clay tiles; in part because they would have to produce molds from scratch for the tiles, and would have to ship substantially greater distances; were between $18 and $24 per tile. All of the prices listed above are per tile and are the total cost including shipping and development of the mold where applicable.

The roof replacement was bid out separately from other projects which include Recovery Act funds, and is the only work being done on this public building. Therefore, it fits the definition of a "project" and the total cost of the roof replacement is equal to the total project cost.

2 CFR 176.110, titled "Evaluating proposals of foreign iron, steel, and/or manufactured goods", states that if "the award official receives a request for an exception based on the cost of certain domestic iron, steel, and/or manufactured goods being unreasonable, in accordance with § 176.80, then the award official shall apply evaluation factors to the proposal to use such foreign iron, steel, and/or manufactured goods" Per that section, the total evaluated cost = project cost estimate + (.25 × project cost estimate).

The total cost of the project with the tiles from Piedras Negras is $71,040. The total evaluated cost is $71,400 + (.25 × $71,400) or $92,625.

The minimum cost for the project with US tiles is $176,187, a cost increase of 148%. Thus, the Spanish Red Clay Tiles needed for this project that are domestically manufactured will increase the cost of the overall project by more than 25 percent.

Having established a proper justification based on unreasonable cost, EERE hereby provides notice that on April 15, 2011, a project-specific waiver of section 1605 of the Recovery Act was issued as detailed *supra.* This notice constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Acting Assistant Secretary for EERE with respect to expenditures within the purview of his responsibility. Consequently, this waiver applies only to EERE projects carried out under the Recovery Act; and only to this project specifically, waiver requests, even for the same or similar items, will be handled individually, because individual factors apply to each project.

Authority: Pub. L. 111–5, section 1605.

Issued in Washington, DC, on April 15, 2011.

Henry Kelly,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.

[FR Doc. 2011–12717 Filed 5–23–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Nationwide Categorical Waivers Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice of Limited Waivers.

SUMMARY: The U.S. Department of Energy (DOE) is hereby granting a nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(2), (iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality), with respect to: (1) 400 to 750 watt micro hydro-turbines meeting the specifications detailed below; (2) Oil fired direct vent space heaters for use in buildings that do not have ducts or piping for boiler heating systems; (3) ENERGY STAR rated electric heat pump water heaters and ENERGY STAR rated through-the-wall air conditioners; (4) Grid tied solar inverters of 800W or less, for applications where the panels generate 139VDC or less (not including micro-inverters); (5) 50 hp TEFC inverter duty motors for use in an existing Marley cooling tower; (6) Geothermal heat pumps for demonstration scale waste heat geothermal systems that allow the direct use of untreated wastewater to heat and cool commercial buildings; (7) Point to point/point to multi-point electronic broadband microwave radio systems with alignment tone and IE browser interface; (8) LED luminaires for roadway illumination with customized filter application to meet specific lighting requirements of Mauna Kea observatory; (9) Compressed Natural Gas (CNG) compressors, able to provide 3600 psi (248 bar) temperature compensated CNG supply to fast fill storage and fueling dispensers, efficient and adaptable to a small fleet (approximately 5 vehicles), as well as the wireless remote shut down controls (transmitters and receivers) for those CNG systems; (10) 8000W solar inverters for use with U.S. manufactured 315W panels; (11) Electronically commutated motor (ECM) type inline pumps; and (12) Inverters that permit optimal output of four (4) or more types of modules per array connected to inverter that will be used on eligible EERE-Recovery Act funded projects.

DATES: Effective April 15, 2011.

FOR FURTHER INFORMATION CONTACT: Benjamin Goldstein, Energy Technology Program Specialist, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, Department of Energy, 1000 Independence Avenue, SW., Mailstop EE–2K, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: Under the authority of the Recovery Act, Public Law 111–5, section 1605(b)(2), the head of a federal department or agency may issue a "determination of inapplicability" (a waiver of the Buy

American provision) if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality ("nonavailability"). On September 17, 2010, the authority of the Secretary of Energy to make all inapplicability determinations was re-delegated to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act. Pursuant to this delegation the Assistant Secretary, EERE, has concluded that: (1) 400 to 750 watt micro hydro-turbines meeting the specifications detailed below; (2) Oil fired direct vent space heaters for use in buildings that do not have ducts or piping for boiler heating systems; (3) ENERGY STAR rated electric heat pump water heaters and ENERGY STAR rated through-the-wall air conditioners; (4) Grid tied solar inverters of 800W or less, for applications where the panels generate 139VDC or less (not including micro-inverters); (5) 50 hp TEFC inverter duty motors for use in an existing Marley cooling tower; (6) Geothermal heat pumps for demonstration scale waste heat geothermal systems that allow the direct use of untreated wastewater to heat and cool commercial buildings; (7) Point to point/point to multi-point electronic broadband microwave radio systems with alignment tone and IE browser interface; (8) LED luminaires for roadway illumination with customized filter application to meet specific lighting requirements of Mauna Kea observatory; (9) Compressed Natural Gas (CNG) compressors, able to provide 3600 psi (248 bar) temperature compensated CNG supply to fast fill storage and fueling dispensers, efficient and adaptable to a small fleet (approximately 5 vehicles), as well as the wireless remote shut down controls (transmitters and receivers) for those CNG systems; (10) 8000W solar inverters for use with U.S. manufactured 315W panels; (11) Electronically commutated motor (ECM) type inline pumps; and (12) Inverters that permit optimal output of four (4) or more types of modules per array connected to inverter that will be used on eligible EERE-Recovery Act funded projects qualify for the "nonavailability" waiver determination.

EERE has developed a rigorous process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver of the Recovery Act Buy American provision. This process involves a close collaboration with the United States Department of Commerce National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), in order to scour the domestic manufacturing landscape in search of producers before making any nonavailability determination.

The MEP has 59 regional centers with substantial knowledge of, and connections to, the domestic manufacturing sector. MEP uses their regional centers to "scout" for current or potential manufacturers of the product(s) submitted in a waiver request. In the course of this interagency collaboration, MEP has been able to find exact or partial matches for manufactured goods that EERE grantees had been unable to locate. As a result, in those cases, EERE was able to work with the grantees to procure American-made products rather than granting a waiver.

Upon receipt of completed waiver requests for the twelve products in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the NIST MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers. The MEP reported that their scouting process did not locate any domestic manufacturers for the exact items needed to meet the product specifications required by the EERE grant recipient.

In addition to the MEP collaboration outlined above, the EERE Buy American Coordinator worked with labor unions, trade associations and other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for each item contained in this waiver. EERE also conducted significant amounts of independent research to supplement MEP's scouting efforts, including utilizing technology experts employed by the Department of Energy or the Department of Energy's National Renewable Energy Laboratory. EERE's research efforts confirmed the MEP findings that the goods included in this waiver are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The nonavailability determination is also informed by the numerous inquiries to EERE from recipients of EERE Recovery Act funds, and from suppliers, distributors, retailers and trade associations—all stating that their individual efforts to locate domestic manufacturers have been unsuccessful.

Having established a proper justification based on domestic nonavailability, EERE hereby provides notice that on March 21, 2011, twelve nationwide categorical waivers of section 1605 of the Recovery Act were issued as detailed *supra.* This notice constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for Energy Efficiency and Renewable Energy with respect to expenditures within the purview of her responsibility. Consequently, this waiver applies to all EERE projects carried out under the Recovery Act.

Authority: Pub. L. 111–5, section 1605.

Issued in Washington, DC, on April 15, 2011.

Henry Kelly,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.

[FR Doc. 2011–12719 Filed 5–23–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Application of the Energy Planning and Management Program Power Marketing Initiative to the Boulder Canyon Project

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of Extension of Decision Effective Date and Comment Period.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), is extending the effective date of decisions it announced and the comment period on proposals made in a notice published in the **Federal Register** on April 27, 2011.

DATES: The effective date of the decisions announced in Western's April 27, 2011, **Federal Register** notice (FRN) has been extended from May 27, 2011, to December 31, 2011. The deadline for the submission of comments on the proposals described in Western's April 27, 2011 FRN has been extended from June 16, 2011, to September 1, 2011.

Western will hold a public information forum and a public comment forum regarding the proposals described in its April 27, 2011 FRN. The public information forum will be held on July 13, 2011, 10 a.m., MST, in Phoenix, Arizona. The public comment forum will be held on August 17, 2011, 10 a.m., MST, in Phoenix, Arizona.

Western will accept written comments on or before September 1, 2011. Western reserves the right to not consider any comments received after this date.

ADDRESSES: Comments may be submitted to: Mr. Darrick Moe, Western Area Power Administration, Desert Southwest Regional Manager, P.O. Box 6457, Phoenix, AZ 85005–6457. Comments may also be faxed to (602) 605–2490 or e-mailed to *Post2017BCP@wapa.gov.*

The public information and comment forum location will be the Western Area Power Administration, Desert Southwest Regional Office, 615 S. 43rd Ave., Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Simonton, Public Utilities Specialist, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, telephone (602) 605–2675, e-mail *Post2017BCP@wapa.gov.* Information regarding Western's Boulder Canyon Project (BCP) Post-2017 remarketing efforts, the Energy Management and Planning Program (Program), and the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (Conformed Criteria) published in the **Federal Register** on December 28, 1984 (49 FR 50582), are available at *http://www.wapa.gov/dsw/pwrmkt.*

SUPPLEMENTARY INFORMATION:

In an April 27, 2011 FRN, Western announced that it will apply the Program's Power Marketing Initiative to the BCP and that Western has determined that all BCP electric service contracts resulting from this remarketing effort shall have a term of thirty (30) years commencing October 1, 2017. The effective date of these decisions was initially May 27, 2011.

Western also made additional proposals relative to the BCP Post-2017 remarketing effort, including the amount of marketable contingent capacity and firm energy, the amount of marketable contingent capacity and firm energy to be extended to existing contractors, the size of the resource pool to be created, and excess energy provisions. Western announced that public comments on these proposals would be accepted through June 16, 2011.

Since publication of this FRN, Western has received comments requesting an extension of the effective date of these decisions and the comment period to allow additional time for on-going legislative activities. In consideration of these comments, Western has decided to extend the effective date of these decisions and the comment period for the proposals described in Western's April 27, 2011 FRN. The effective date of these decisions is now December 31, 2011, and comments will be accepted until September 1, 2011 (see **DATES**).

Western canceled the public information and comment forums that were scheduled as a result of its April 27, 2011 FRN. Western did not hold public forums on the BCP Post-2017 remarketing effort on May 25, 2011. Western has rescheduled these public forums as described in this notice (see **DATES**).

This extension provides additional time for on-going legislative activities as well as additional opportunity for interested parties, including Native American Tribes, to consult with Western and comment on the proposals.

Dated: May 18, 2011.

R. Jack Dodd,

Assistant Administrator for Corporate Liaison.

[FR Doc. 2011–12723 Filed 5–23–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0265; FRL–9307–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; $PM_{2.5}$ National Ambient Air Quality Standard Implementation (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted later, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 23, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–0265, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov,* or by *mail to:* EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by *mail to:* Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Butch Stackhouse, Air Quality Policy Division, Office of Air Quality Planning and Standards, (Mail Code C539–01), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (919) 541–5208; *fax number:* (919) 541–0824; *e-mail address: stackhouse.butch@epa.gov;* or Karl Pepple, Air Quality Policy Division, Office of Air Quality Planning and Standards, (Mail Code C539–01), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (919) 541–2683; *fax number:* (919) 541–0824; *e-mail address: pepple.karl@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 2, 2011 (76 FR 5801), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment during the comment period, which is addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2007–0265, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without

change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: $PM_{2.5}$ National Ambient Air Quality Standard Implementation (Renewal).

ICR numbers: EPA ICR No. 2258.02, OMB Control No. 2060–0611.

ICR Status: This ICR is scheduled to expire on May 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The purpose of this ICR is to assess the burden (in hours and dollars) of the 1997 and 2006 $PM_{2.5}$ NAAQS as well as associated the periodic reporting and record keeping. The ICR addresses requirements that involve collecting information from states with areas that have been designated nonattainment for the $PM_{2.5}$ NAAQS.

The time period covered in this ICR is a 3 year period from June 1, 2011 through May 31, 2014. The milestones for the state or local air agency respondents include the required State Implementation Plan (SIP) elements prescribed in the Clean Air Act (CAA) sections 110 and part D, subpart 1 of title I for Implementation plans and the requirements in the $PM_{2.5}$ NAAQS Implementation Rule (40 CFR 51.1000—51.1012). The $PM_{2.5}$ SIP will contain rules and other requirements designed to achieve the NAAQS by the deadlines established under the CAA, and it also contains a demonstration that the state's requirements will in fact result in attainment. The SIP must meet the requirements in subpart 1 to adopt Reasonable Available Control Measures, Reasonable Available Control Technology, and provide for Reasonable Further Progress toward attainment for the period prior to the area's attainment date. However, not all of the milestones and associated burden and administrative cost estimates apply to every designated $PM_{2.5}$ nonattainment area. Areas with cleaner air quality have fewer requirements.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 317 hours per response for the 1997 $PM_{2.5}$ NAAQS, and 4,243 hours per response for the 2006 $PM_{2.5}$ NAAQS. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are states and Regional offices.

Estimated Number of Respondents: 39.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 175,400.

Estimated Total Annual Cost: $11,418,540 million in labor costs. There are no annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 34,600 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease reflects EPA's information that the number of non-attainment areas for the 1997 $PM_{2.5}$ standard has decreased as areas have come into compliance with the standards and that the burden associated with the remaining non-attainment areas is less because of the work they have done previously to comply with the standards. At the same time, promulgation of the 2006 $PM_{2.5}$ standard led to designations of new areas as non-attainment, leading to an increased burden on those respondents.

Dated: May 12, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–12789 Filed 5–23–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9310–5]

Science Advisory Board Staff Office Notification of a Public Teleconference of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the chartered SAB on June 16, 2011 to conduct a quality review of a draft SAB report *Efficacy of ballast water treatment systems; A Report by the EPA Science Advisory Board (May 2011 Draft).*

DATES: The public teleconference will be held on June 16, 2011 from 12 p.m. to 4 p.m. (Eastern Daylight Time).

ADDRESSES: The public teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning the public teleconference may contact Ms. Stephanie Sanzone, Designated Federal Officer (DFO). Ms. Sanzone may be contacted at the EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or by telephone/voice mail at (202) 564–2067; fax at (202) 565–2098; or e-mail at sanzone.stephanie@epa.gov. General information concerning the EPA Science Advisory Board can be found on the EPA Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the SAB will hold a public teleconference to conduct a quality review of a draft report entitled *Efficacy of ballast water treatment systems; a report by the EPA Science Advisory Board.* The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: Vessel ballast water discharges are a major source of

nonindigenous species introductions to marine, estuarine, and freshwater ecosystems of the United States. Ballast water discharges are regulated by EPA under authority of the Clean Water Act (CWA) and the U.S. Coast Guard under authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act, as amended (NANPCA). Under the authority of the CWA, EPA's Vessel General Permit requires the flushing and exchange of ballast water by vessels in Pacific-near-shore voyages and the saltwater flushing of ballast water tanks that are empty or contain only un-pumpable residual ballast water. While useful in reducing the presence of potentially invasive organisms in ballast water, ballast water exchange and saltwater flushing can have variable effectiveness and may not always be feasible due to vessel safety concerns.

EPA's Office of Water has requested SAB review of technical documents and available data on the efficacy of ballast water treatment systems and advice on improving the performance of such systems. The SAB's Ecological Processes and Effects Committee (EPEC) Augmented for the Ballast Water Advisory has conducted this review and developed the draft advisory entitled *Efficacy of ballast water treatment systems; A Report by the EPA Science Advisory Board (May 2011 Draft).*

Background information about the SAB advisory activity, including its meetings and teleconferences, can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/BW%20discharge?OpenDocument.*

Availability of Meeting Materials: The agenda and other materials in support of the teleconference will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of the teleconference.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for SAB panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the Designated Federal Officer directly. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a teleconference will be limited to three minutes. Those interested in being placed on the public speakers list for the June 9, 2011 teleconference should contact Ms. Sanzone at the contact information provided above no later than June 9, 2011. *Written Statements:* Written statements should be supplied to the DFO via e-mail at the contact information noted above by June 9, 2011 for the teleconference so that the information may be made available to the Panel members for their consideration. *Written statements should be supplied in one of the following electronic formats:* Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Ms. Sanzone (202) 564–2067 or *sanzone.stephanie@epa.gov.* To request accommodation of a disability, please contact Ms. Sanzone preferably at least ten days prior to the teleconference to give EPA as much time as possible to process your request.

Dated: May 18, 2011.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Staff Office.

[FR Doc. 2011–12773 Filed 5–23–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9310–6; EPA–HQ–OEI–2011–0121]

Establishment of a New System of Records for Personal Information Collected by the Environmental Protection Agency's Light Duty In-Use Vehicle Testing Program

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency's (EPA) Office of Transportation and Air Quality is giving notice that it proposes to create a new system of records pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a). This system of records contains personally identifiable information (PII) collected from owners of light-duty vehicles who volunteer to participate in EPA's Light-Duty In-Use Vehicle Testing Program.

DATES: Persons wishing to comment on this new system of records notice must do so by July 5, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2011–0121, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
- *Fax:* (202) 566–1752.
- *Mail:* OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* OEI Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OEI–2011–0121. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov.* The *http://www.regulations.gov* Web site is an "anonymous access" system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available (e.g., CBI or other information for which disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1745.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; *telephone number:* 734–214–4851; *fax number:* 734–214–4869; *e-mail address: sohacki.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

The U.S. Environmental Protection Agency is creating a Privacy Act system of records in support of its Light-Duty In-Use Vehicle Testing Program. The Clean Air Act requires manufacturers of motor vehicles and engines to design and build vehicles that will comply with emissions standards throughout the vehicle's life span. EPA is responsible for monitoring compliance and investigating possible noncompliance with this requirement. In order to fulfill this function, it is necessary for EPA to test actual "in-use" vehicles. This program uses motor vehicle registration information obtained from the Michigan Secretary of State to recruit volunteers who will allow their vehicles to be tested. The information that will be maintained regarding program participants includes: (1) Car owner's name, address, phone number, and vehicle identification numbers (VIN); (2) owners' response cards indicating willingness to participate or not; (3) owners' description of their vehicles on the recruitment response card and telephone questionnaire; (4) notary statement for questionnaire; (5) owners' optionally provided car maintenance records; (6) results of tests of vehicles recruited; and (7) vehicle release agreement, vehicle test agreement, loaner car agreement, cash incentives agreement (includes social security number for mandatory tax reporting purposes if cash incentive is greater than $600) and (8) cash receipt.

The above information is contained in computer and paper files at EPA's National Vehicle and Fuel Emissions Laboratory in Ann Arbor, Michigan. All information provided by the Secretary of State (vehicle owners' names, addresses, vehicle identification numbers, vehicle make, model year, body style and weight/fee category) is governed by an approved security, privacy and personnel policy plan mandated by the State. The Plan includes provisions governing the entire information system with respect to computer security, prohibition and detection of any unauthorized access or use of personal information, employee agreements, annual review, notification of violations, system supervision requirements, and if necessary, disciplinary actions. Only contractor employees (governed by Privacy Act compliance terms in their contract) and EPA employees administering the program have access to the information provided by the Secretary of State, the questionnaire, maintenance records, and test results. Files containing personal information are kept in locked filing cabinets. Physical access to the filing cabinets is limited to authorized personnel employees with building key cards. All files are assigned a control number by which they are accessed. If the vehicle owner gives consent, the questionnaire (including the owner's name and address), maintenance records, and test results are shared with the vehicle manufacturer. This information is used by the manufacturer to participate in problem solving with the Agency when emissions compliance issues are raised by the test results and to contact the current owner for voluntary participation in the retest conducted by the manufacturer. Manufacturers already maintain VIN and original owner information in connection with warranty obligations and maintenance information if the service was performed in manufacturer-affiliated repair shops. However, additional maintenance information voluntarily submitted by the owner to the Agency will be used to help identify the cause of emissions compliance issues.

Dated: April 19, 2011.

Malcolm D. Jackson,

Assistant Administrator and Chief Information Officer.

EPA–60

SYSTEM NAME:

EPA's Light-Duty In-Use Vehicle Testing Program Information System.

SYSTEM LOCATION:

USEPA, Office of Transportation and Air Quality, Compliance and Innovative Strategies Division, National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood, Ann Arbor, Michigan 48105.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who volunteer to loan vehicles they own or lease for emissions standards testing at the National Vehicle and Emissions Laboratory.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Car owner/lessee names, addresses, phone numbers, and vehicle identification numbers (VINs).

(b) Owners' response cards.

(c) Owners' description of vehicle on response cards and telephone questionnaires; notary statement for questionnaire; owner's car maintenance records (optional); results of tests on participating vehicles.

(d) Vehicle release; vehicle test agreement; loaner car agreement, cash incentives agreement (includes social security number for mandatory tax reporting purposes if incentive is greater than $600) and cash receipt.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM (INCLUDES ANY REVISIONS OR AMENDMENTS):

Title II of the Clean Air Act, (42 U.S.C. 7521 *et seq.*) requires manufacturers of motor vehicles and

engines to design and build vehicles which will comply with emission standards throughout their lifespan. Pursuant to the Clean Air Act section 207 (42 U.S.C. 7541), EPA is responsible for monitoring compliance and investigating possible noncompliance with emission standards.

PURPOSE(S):

The primary purpose of the system is to collect and maintain the information necessary to recruit vehicles of a particular class for testing. This includes information relevant to the testing of recruited vehicles, maintenance records (if volunteered by the participant), information from tests conducted on the vehicles, and documents necessary to administer the program (vehicle release, loaner agreement, cash receipt, *etc.*).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

General routine uses A, F, G, H, K and L apply to this system. (A detailed description of these routine uses can be found in the Agency's Systems of Records Web site at *http://www.epa.gov/privacy/notice/general.htm.*)

In addition, the following routine uses may also apply:

A. If the owner consents, maintenance records, questionnaire answers, and test results are disclosed to the manufacturer of the owner's vehicle. This information may be used by the manufacturer and EPA to help clarify the test-related issues.

B. Manufacturers may, on occasion, use this information to contact a vehicle owner to request voluntary participation in a manufacturer-conducted retest.

C. IRS Form 21099 is filed with the IRS as required for payments of $600 or more. The information provided on the form includes the recipient's name, address, and social security number.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

• Storage: Information from the Michigan Secretary of State is received on diskette and stored on a computer. All subsequent data is received and stored as paper files.

• Retrievability: All data are retrieved by a control number that is assigned to each participant at the initiation of the vehicle recruitment process.

• Safeguards:

—Computer-stored information is protected in accordance with the Agency's security requirements.

—Access to the information in the system is limited to authorized Agency and contractor personnel who administer the program. No external access to the system is provided. A subset of the information may be shared with manufacturers in accordance with the vehicle owner's prior consent.

—The contractor is subject to Federal Acquisition Regulations (FAR) Privacy Act clauses included in its contract.

—All information in the system is subject to the agreement entered into by the Agency with the Michigan Department of State under the "Security, Privacy, and Personnel Policy Plan Governing Personal Information." The Plan includes methods to prohibit and detect any unauthorized access or use of personal information; an annual review of data security policies and procedures; notification of any known or alleged breach of security of personal data; notification of individuals affected by any unauthorized release of personal information; maintenance of records identifying each third-party person or entity obtaining personal information and the uses thereof; notification of the supervisor if any employee is approached to provide information improperly; and disciplinary actions for violations of the Plan.

• Retention and Disposal: Records stored in this system are subject to Schedule 483.

SYSTEM MANAGER(S) AND ADDRESS:

Lynn Sohacki, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; *telephone number:* 734–214–4851; *fax number:* 734–214–4869; *e-mail address: sohacki.lynn@epa.gov.*

NOTIFICATION PROCEDURE:

Requests to determine whether this system of records contains a record pertaining to you must be sent to the Agency's Freedom of Information Office; U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW., Room 6416 EPA West; Washington, DC 20460; (202) 566–1667; *E-mail:* (*hq.foia@epa.gov*); *Attn:* Privacy Officer.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should follow the Notification Procedures to contact the Agency. Individuals seeking access to their personal information contained in this system of records will be required to provide adequate identification (*e.g.,* driver's license, military identification card, employee badge or identification card). Access requests must meet the requirements of EPA's Privacy Act regulations at 40 CFR part 16.

CONTESTING RECORDS PROCEDURES:

Individuals wishing to request access to their records should follow the Notification Procedures to contact the Agency. Requests to correct or amend a record must identify the subject record and the corrective action sought. Complete EPA Privacy Act procedures are set out in 40 CFR part 16.

RECORD SOURCE CATEGORIES:

(1) Vehicle Identification Numbers (VINs), vehicle class descriptors, and owner name and address from the Michigan Department of State;

(2) Information on the vehicles provided by their owners from potential and actual participants in the program;

(3) Results of tests conducted on participating owners' vehicles;

(4) Information generated by EPA and its contractor in administering the program.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 2011–12768 Filed 5–23–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket EPA–RO4–SFUND–2011–0432, FRL–9310–4]

East Calloway County Middle School Mercury Spill Site, Murray, Calloway County, KY; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the East Calloway County Middle School Mercury Spill Site located in Murray, Calloway County, Kentucky for publication.

DATES: The Agency will consider public comments on the settlement until June 23, 2011. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2011–0432 or Site name East Calloway County

Middle School Mercury Spill Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *http://www.epa.gov/region4/waste/sf/enforce.htm.*
- *E-mail. Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: April 29, 2011.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2011–12770 Filed 5–23–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9310–3]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Town of Smyrna, DE

SUMMARY: The EPA is hereby granting a waiver of the Buy American Requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Town of Smyrna, DE ("Town"), for the purchase of two inverter-driven ductless split HVAC systems: one air conditioning system and one combined heating/air conditioning system (HVAC), manufactured in Japan and Thailand by Mitsubishi Electronics American, Inc.—HVAC Division. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances.

The ARRA funded project is for upgrading two well houses (Well House No. 1 and Well House No. 2) with ductless split HVAC systems. The Well House No. 1 upgrade includes an air conditioning system for the well room and for Well House No. 2 the upgrade includes a heat pump system for the electrical room. The Town evaluated four different manufacturers of the specified ductless split air conditioning and heat pump systems. Based upon information submitted by the Town and its consulting engineer, EPA has concluded that there are no HVAC systems manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet the technical specifications and that a waiver of the Buy American provisions is justified. The Regional Administrator is making this determination based on the review and recommendations of the EPA Region III, Water Protection Division, Office of Infrastructure and Assistance.

The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to the requirements of Section 1605(a) of ARRA. This action permits the purchase of two inverter-driven ductless split HVAC systems for the proposed project being implemented by the Town of Smyrna.

DATES: May 24, 2011.

FOR FURTHER INFORMATION CONTACT: Robert Chominski, Deputy Associate Director, (215) 814–2162, or David McAdams, Environmental Engineer, (215) 814–5764, Office of Infrastructure & Assistance (OIA), Water Protection Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the Town of Smyrna, Delaware for the purchase of two inverter-driven ductless split HVAC systems (HVAC) for Well Houses 1 and 2. EPA has evaluated the Town's basis for procuring the two HVAC systems for these well houses. The ARRA funded project is for upgrading two well houses (Well House No. 1 and Well House No. 2) with HVAC systems. The Well House No. 1 upgrade includes an air conditioning system for the well room and for Well House No. 2 the upgrade includes a heat pump system for the electrical room. Each system includes an indoor wall mounted evaporator-fan unit and an outdoor aired cooled compressor-condenser. The new HVAC split systems will provide benefits to the Town due to the product's reliability with the electronics controlling critical infrastructure, cost effectiveness, energy efficiency, and ease of maintenance. The project specifications require a scroll inverter type compressor with multi-speed motor and copper refrigerant tubes having mechanically bonded aluminum fins complying with ARI 210/240, and with liquid sub-cooler; wall mounted evaporator fan unit with direct drive centrifugal fan and copper refrigerant tubes with mechanically bonded aluminum fins complying with ARI 210/240; use of R–410A refrigerant; and a low ambient kit permitting operation down to 0°F [applicable to the heat pump only]. The HVAC systems are specifically designed for this project to support new Motor Control Centers in the well houses. Currently, there are no HVAC systems in the two well houses. Based upon information submitted by the Town and its consulting engineer, EPA has concluded that there are no ductless split HVAC systems manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet the technical specifications for the Town to pursue the purchase of domestically manufactured HVAC systems.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided under Section 1605(b) if EPA determines that (1) Applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than25 percent.

EPA has also evaluated the Town's request to determine if its submission is considered late or if it could be considered as if it was timely filed, as per the OMB Guidance at 2 CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB guidance, which says "the award official may deny the request". For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the

government, then EPA will still consider granting a waiver.

In this case, there are no U.S. manufacturers that meet the Town's project specifications for the HVAC systems. The waiver request was submitted after the contract date due to the Town's contractor not notifying them until February 24, 2011 that a Buy American waiver was needed since they could not find an American manufacturer of the HVAC system to meet the project specifications. Therefore, the Town did not submit a waiver request until March 3, 2011. There is no indication that the Town failed to request a waiver to avoid the requirements of the ARRA, particularly since there are no domestically manufactured products that meet the project specifications. EPA will consider the Town's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by the Town and no loss by the government due to the late request.

The April 28, 2009 EPA HQ Memorandum, Implementation of Buy American provisions of Public Law 111–5, the "American Recovery and Reinvestment Act of 2009," defines reasonably available quantity as "the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design." The Town has provided information to the EPA representing that there are currently no domestic manufacturers of the HVAC systems that meet the project specification requirements. Based on additional research by EPA's consulting contractor and to the best of the Region's knowledge at this time, there does not appear to be any other manufacturer capable of meeting the Town's specifications.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are "shovel ready" by requiring utilities, such as the Town, to revise their standards and specifications, institute a new bidding process, and potentially choose a more costly, less efficient project. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving Fund assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. To further delay construction is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.The OIA has reviewed this waiver request and, to the best of our knowledge at the time of review, has determined that the supporting documentation provided by the Town is sufficient to meet the criteria listed under Section 1605(b) and in the April 28, 2009, "Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' Memorandum:" Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality to meet the Town's technical specifications, a waiver from the Buy American requirement is justified.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the Town of Smyrna is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of two inverter-driven ductless split HVAC systems using ARRA funds as specified in the Town of Smyrna's request of March 3, 2011. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers "based on a finding under subsection (b)."

Authority: Public Law 111–5, section 1605.

Issued on: Dated: April 27, 2011.

W.C. Early,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 2011–12772 Filed 5–23–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 11–71; FCC 11–64]

Maritime Communications/Land Mobile, LLC, Licensee of Various Authorizations in the Wireless Radio Services, Applicant for Modification of Various Authorizations in the Wireless Radio Services

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document commences a hearing proceeding to determine ultimately whether Maritime Communications/Land Mobile, LLC (Maritime) is qualified to be and to remain a Commission licensee, and as a consequence whether any or all of its licenses should be revoked, and whether any or all of the applications to which Maritime is a party should be denied. The issues designated for hearing also include whether Maritime should be ordered to repay to the U.S. Treasury the full amount of the bidding credit, plus interest, that it received as a result of claiming designated entity status; whether a forfeiture not to exceed the statutory maximum should be issued against Maritime for apparent violations of the Commission's rules; whether Maritime and its principals should henceforth be prohibited from participating in FCC auctions; and whether Maritime's licenses for its site-based AMTS stations cancelled automatically for lack of construction or permanent discontinuance of operation in violation of sections of the Commission's rules.

DATES: Petitions to intervene by parties desiring to participate as a party in the hearing, pursuant to 47 CFR 1.223, may be filed on or before June 23, 2011.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gary Schonman, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission at (202) 418–1795.

SUPPLEMENTARY INFORMATION: Each document that is filed in this proceeding must display the docket number of this hearing, EB Docket No. 11–71, on the front page. This is a Public Version of the text of the Order to Show Cause and Notice of Opportunity for Hearing (Order to Show Cause), FCC 11–64, released April 19, 2011, which is also available for inspection and copying from 8 a.m.

until 4:30 p.m., Monday through Thursday or from 8 a.m. until 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of the Public Version may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160, facsimile (202) 488–5563, e-mail *FCC@BCPIWEB.com,* or you may contact BCPI via its Web site, *http://www.bcpiweb.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, FCC 11–64. The Public Version of the Order to Show Cause is also available on the Internet at the Commission's Web site through its Electronic Document Management System (EDOCS) at *http://hraunfoss.fcc.gov/edocs_public/.* Alternative formats are available to persons with disabilities (Braille, large print, electronic files, audio format); to obtain, please send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Order To Show Cause

I. Introduction

1. In this Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, we commence a hearing proceeding before the Administrative Law Judge to determine ultimately whether Maritime Communications/Land Mobile, LLC (Maritime) is qualified to be and to remain a Commission licensee, and as a consequence thereof, whether any or all of its licenses should be revoked, and whether any or all of the applications to which Maritime is a party should be denied.[1] In addition, we direct the Administrative Law Judge to determine whether Maritime should be ordered to repay to the United States Treasury the full amount of the bidding credit, plus interest, that it received as a result of claiming designated entity status in Auction No. 61; whether a forfeiture not to exceed the statutory maximum should be issued against Maritime for apparent violations of the Commission's rules; and whether Maritime and its principals should henceforth be prohibited from participating in FCC auctions.[2]

2. As discussed more fully below, based on the totality of the evidence, there are substantial and material questions of fact as to whether Maritime: (i) Violated the designated entity rules and received a credit on its obligations to the United States Treasury of approximately $2.8 million to which it was not entitled; (ii) repeatedly made misrepresentations to and lacked candor with the Commission in connection with its participation in Auction No. 61 and the claimed bidding credit; (iii) failed to maintain the continuing accuracy and completeness of information furnished in its still pending long-form application; and (iv) purports to hold authorizations that have cancelled automatically for lack of construction or permanent discontinuance of operation.

3. Sections 1.2110 and 1.2112 of the Commission's rules require Maritime, in seeking designated entity status, to have disclosed in its pre-auction short-form application and in its post-auction long-form application its gross revenues and those of its affiliates, its controlling interests, and the affiliates of its controlling interests.[3] Despite repeated Commission requests for the needed information over the last six years, substantial factual questions remain regarding Maritime's eligibility for a small business bidding credit. Indeed, it is still not clear whether all required disclosures of interests and revenues have been made.

4. In both its short-form and long-form applications filed in 2005, Maritime disclosed only the interests of Maritime's named principal Sandra M. DePriest and her affiliates. Maritime claimed that Sandra DePriest was the sole officer and key employee of Maritime and appears to have concluded that because her husband, Donald R. DePriest, was not an "officer" or "director" of Maritime, his interests were not relevant to the designated entity analysis. However, Maritime was obligated to disclose Donald DePriest's revenues pursuant to the spousal affiliation requirements set forth in § 1.2110 of the Commission's rules. Furthermore, there is credible evidence suggesting that Donald DePriest was a real party in interest behind Maritime and exercised *de facto* control of Maritime—both of which would also require attribution of his interests under our designated entity rules. Among other things, Donald DePriest incorporated Maritime, [REDACTED].

5. Even after the Commission directed Maritime to disclose Mr. DePriest's interests, Maritime's submissions appear to have lacked candor. It was more than a year after its initial auction filing before Maritime amended its long-form application (at staff direction) to disclose what the company represented, at that time, were the gross revenues of Donald DePriest and his affiliates. In the amendment, Maritime stated, among other things, that Donald DePriest controlled a single revenue-producing company: American Nonwovens Corporation. Several weeks later—and only in response to ongoing administrative litigation—Maritime belatedly acknowledged that Donald DePriest actually controlled three more entities: Charisma Broadcasting Co., Bravo Communications, Inc., and Golden Triangle Radio, Inc. Some three years later—and again only in response to a written request for information from the Wireless Telecommunications Bureau (WTB) under section 308(b) of the Communications Act—Maritime divulged more than two dozen additional affiliates of Donald DePriest. Several months thereafter—and only in response to an Enforcement Bureau letter of inquiry—Maritime disclosed information about Donald DePriest's involvement in a large multinational corporation, MCT Corp., which had potentially attributable revenue [REDACTED]. The timing and substance of these disclosures raise material questions of fact about whether Maritime and its principals engaged in a pattern of deception and

[1] A list of the authorizations held by Maritime that are the subject of this Order is appended hereto as Attachment A. A list of the pending applications filed by or on behalf of Maritime that are the subject of this Order is appended hereto as Attachment B.

[2] We note that Maritime and its principals have made various requests for confidential treatment of certain information and submissions pursuant to § 0.459 of the Commission's rules, 47 CFR 0.459. *See, e.g.,* Letter and Request for Confidential Treatment from Patricia J. Paoletta and Jonathan B. Mirsky, Counsel to Wireless Properties of Virginia, Inc. and Maritime Communications/Land Mobile, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated February 10, 2011; Letter and Request for Confidential Treatment from Patricia J. Paoletta and Jonathan B. Mirsky, Counsel to Wireless Properties of Virginia, Inc. and Maritime Communications/Land Mobile, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated January 25, 2011; Letter and Request for Confidential Treatment from Patricia J. Paoletta and Jonathan B. Mirsky, Counsel to Wireless Properties of Virginia, Inc. and Maritime Communications/Land Mobile, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated December 29, 2010; Letter and Request for Confidential Treatment from Dennis C. Brown, *Esq.,* Counsel to MCLM, to Michele Ellison, Chief, Enforcement Bureau, Federal Communications Commission, dated March 29, 2010. Pursuant to 47 CFR 0.459(d)(3), we are deferring action on such confidentiality requests, and are according confidential treatment to the relevant information until such time as a ruling is made. *See* 47 CFR 0.459(d)(3). Therefore, we will release to the public a redacted version of the Order, where "[REDACTED]" will indicate information for which the submitter has requested confidential treatment. The unredacted version of this Order will be made available to Maritime.

[3] 47 CFR 1.2110 and 1.2112.

misinformation designed to obtain and conceal an unfair economic advantage over competing auction bidders through the misappropriation of monies that would otherwise have flowed to the United States Treasury.

6. There are also substantial and material questions of fact about whether Maritime made repeated and affirmative misrepresentations and provided false certifications to the Commission in both its short- and long-form applications, as well as in various filings submitted over the last six years, in violation of §§ 1.17 and 1.2105 of the Commission's rules.[4]

7. The integrity of our auctions program is of paramount importance, and we take allegations and evidence of auction misconduct very seriously. The Commission relied to its detriment on Maritime's initial and purportedly "corrective" filings—including in its dismissal of a petition to deny. As the Commission has stated, "[we rely] heavily on the truthfulness and accuracy of the information provided to us. If information submitted to us is incorrect, we cannot properly carry out our statutory responsibilities." [5] Consistent with our obligations under sections 309(d) and (e) of the Communications Act of 1934, as amended (Communications Act or Act),[6] we hereby designate this matter for administrative hearing.[7]

II. Background

8. In order to "promote and facilitate the participation of small businesses in the public coast auctions and in the provision of service," bidding credits were made available to "very small businesses" and "small businesses" in Auction No. 61.[8] A bidder with attributed average annual gross revenues of $3 million or less for the preceding three years was characterized as a "very small business" and eligible to receive a 35 percent discount on its winning bids. A bidder with attributed average annual gross revenues of more than $3 million but less than $15 million for the preceding three years was considered a "small business" and eligible to receive a 25 percent discount on its winning bids. A bidder with attributed revenues of $15 million or more for the preceding three years was not eligible for any bidding credit.[9]

A. Maritime's Claimed Eligibility To Receive a Bidding Credit

9. On June 9, 2005, Maritime filed pre-auction FCC Form 175 (the short-form application).[10] In its short-form application, Maritime sought a 35 percent bidding credit, declaring under penalty of perjury that it was eligible for the bidding credit based on its status as a "very small business" with gross revenues of less than or equal to $3 million.[11] The short-form application included a "Gross Revenues Confirmation," which required Maritime to certify that it "provided separate gross revenue information for itself, for each of [its] officers and directors; for each of [its] other controlling interests; for each of [its] affiliates; and for each affiliate of each of [its] officers, directors, and other controlling interests." [12] Maritime asserted that the only gross revenues requiring disclosure were those of Sandra DePriest (valued at less than $450,000 for any given year in the relevant period), and her affiliates Communications Investments, Inc. and S/RJW Partnership, Ltd. (both reporting no revenue).[13] On September 6 and 7, 2005, Maritime filed post-auction FCC Forms 601 and 602 (the long-form application), in which it reasserted its entitlement to the 35 percent bidding credit on the basis of its status as a "very small business." [14]

10. In both its short- and long-form applications, Maritime identified Sandra DePriest as its "sole officer, director and key management personnel." [15] In its short-form application, Maritime identified its counsel, Dennis Brown, as well as John S. Reardon and Ronald Fancher, as authorized bidders for Maritime.[16]

11. Notably, Maritime failed to list Sandra DePriest's spouse, Donald DePriest, as a disclosable interest holder, on either the short-form or the long-form applications, and thus none of the companies controlled by Mr. DePriest were disclosed.[17] Maritime filed an addendum to its long-form application entitled "Disclosable Interest Holders," where the company sought to provide additional information based on the claim that the "information concerning disclosable interest holders was not carried over from the Form 175 application." [18] In this filing, Maritime again asserted that the only disclosable interest holders were Sandra DePriest, Communications Investments, Inc., and S/RJW Partnership, L.P. Maritime also certified for each of the three disclosed interest holders that "unaudited financial statements [were] prepared in accordance with Generally Accepted Accounting Practices and certified by Applicant's chief financial officer," notwithstanding Maritime's apparent failure to name such officer in any of its filings.[19]

12. Based on this limited disclosure, Maritime received a bidding credit valued at $2,737,000 which had the effect of reducing the amount owed to the Commission for Maritime's $7,820,000 winning bid to $5,083,000.

[4] 47 CFR 1.17 and 1.2105.

[5] *In the Matter of Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Notice of Proposed Rulemaking, 17 FCC Rcd 3296, 3297 para. 3 (2002).

[6] 47 U.S.C. 309(d), (e).

[7] We note that on March 11, 2010, Maritime and Southern California Regional Rail Authority ("Metrolink," and together with Maritime, the "Parties") sought Commission consent to assign certain spectrum. See *Application for Assignment of Authorization*, File No. 0004144435. Metrolink has represented that it plans to use such assigned spectrum to comply with the Rail Safety Improvement Act of 2008. *See Rail Safety Improvement Act of 2008*, Public Law No. 110–432, filed Oct. 16, 2008, 122 Stat. 4848, 4856–57 section 104(a) (2008). This law requires, among other things, that by 2015, passenger trains implement positive train control systems and other safety controls to enable automatic braking and to help prevent train collisions. Given the potential safety of life considerations involved in the positive train control area and therefore attendant to the Metrolink application, we will, upon an appropriate showing by the Parties, consider whether, and if so, under what terms and conditions, the public interest would be served by allowing the Metrolink application to be removed from the ambit of this Hearing Designation Order.

[8] *Amendment of the Commission's Rules Concerning Maritime Communications,* Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 para. 65 (1998) (confirming the use of the two tier bidding credit to "allow current public coast licensees to compete favorably with larger entities, without denying entities with relatively small gross revenues the opportunity to participate meaningfully in the auctions," and denying a proposal made by MariTEL to use a one-tier system to determine small business status).

[9] 47 CFR 1.2110 and 80.1252. *See Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005,* Public Notice, 20 FCC Rcd 7811, 7828–29 (WTB 2005).

[10] Short-form application, FCC File No. 0002191807, filed June 9, 2005 (short-form application).

[11] *Id. See also* 47 CFR 1.2110 and 1.2105(a)(2)(iv).

[12] *See* short-form application, FCC File No. 000219807. *See also Maritime Communications/Land Mobile LLC,* Order, 21 FCC Rcd 13735, 13737 (Nov. 27, 2006) ("WTB November 2006 Order") (stating that, "for the purposes of determining the affiliates of an applicant claiming designated entity status, both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States").

[13] *See* short-form application.

[14] *See* long-form application, FCC File No. 0002303355, filed Sept. 6 and 7, 2005 (long-form application).

[15] *See* short-form application and long-form application.

[16] *See* short-form application.

[17] *See* short-form application and long-form application.

[18] *See* Disclosable Interest Holders Addendum to long-form application.

[19] *Id.*

B. Investigations of Maritime Applications

1. Wireless Telecommunications Bureau Proceeding

13. Auction No. 61 concluded on August 17, 2005.[20] On November 14, 2005, Warren C. Havens and certain affiliated entities (collectively "Petitioners") filed a Petition to Deny Maritime's long-form application ("November 2005 Petition to Deny") based on assertions that "Maritime submitted, in its short-form and the [long-form application] fraudulent and false certifications and these included fraudulent and false identity of the real party in control, * * * that Maritime deliberately and fraudulently failed to disclose many 'affiliates' (as defined in FCC auction rules) which, if disclosed, would have resulted in a loss of the 35% bidding credits and resulted in a different auction outcome." [21]

14. On August 3, 2006, WTB issued an order denying the November 2005 Petition to Deny, but determined that Maritime's failure to include Donald DePriest's interests and revenues in its designated entity showing contravened the spousal affiliation provision contained in § 1.2110(c)(5)(iii)(A) of the Commission's rules.[22]

15. Thereafter, on August 21, 2006, Maritime amended its long-form application to provide what Maritime represented were the gross revenues of Donald DePriest and his affiliates. In the amendment, Maritime stated, among other things, that Donald DePriest "controls American Nonwovens Corporation (ANC)" and that "*ANC is the only revenue producing entity that [Donald DePriest] owns or controls.*" [23] Maritime further represented that Donald DePriest had no ownership interest in, was neither an officer nor a director of, and did not control Maritime.[24]

16. On September 18, 2006, Maritime submitted a pleading in response to the Petition for Reconsideration of WTB's August 3, 2006 order.[25] Therein, Maritime belatedly acknowledged that Donald DePriest controlled three additional entities that Maritime had not previously disclosed: Charisma Broadcasting Co., Bravo Communications, Inc., and Golden Triangle Radio, Inc.[26] Maritime listed the average annual gross revenues for each of the three companies at less than $100,000, claiming that such aggregate amount had no effect on Maritime's designated entity status.[27] Maritime attributed its failure to initially identify the three companies to an oversight.[28] Specifically, Maritime stated that it "regrets its oversight of these revenues and trusts that the Commission will recognize that they are immaterial to any issue in the instant matter." [29]

17. On November 27, 2006, WTB ruled that Maritime's bidding credit should be reduced from 35 percent to 25 percent, and it ordered Maritime to pay the difference.[30] On December 26, 2006, Maritime paid $782,000 to the United States Treasury. Three days later, on December 29, 2006, WTB granted Maritime's long-form application, as well as those of the other winning bidders in Auction No. 61.

18. The Order reducing Maritime's bidding credit from 35 percent to 25 percent was the subject of a Petition for Reconsideration, filed by Petitioners, which alleged that Donald DePriest was an undisclosed real party in interest behind Maritime and challenged Maritime's entitlement to any bidding credit in Auction No. 61.[31] The Petitioners asserted, among other things, that Maritime should have disclosed additional entities controlled by Donald DePriest, including Wireless Properties of Virginia, Inc. (a Broadband Radio Service licensee) and MariTEL, Inc. (a VHF Public Coast licensee). Although WTB denied the Petition for Reconsideration in March 2007, in part based on a lack of supporting evidence, WTB stated that, while it appeared that the attribution of the relatively small gross revenues of three identified entities did not affect Maritime's designated entity status, the omission did constitute a violation of the Commission's rules.[32] In addition, WTB noted for the record the contradictory representations made by Maritime and Wireless Properties of Virginia, Inc. regarding whether Donald DePriest was an officer and/or director of Maritime and that Maritime had "offered no explanation for the inconsistent statements regarding Mr. DePriest's status." [33] WTB concluded that it remained concerned by Maritime's failure to provide accurate information on the first attempt, and stated that its actions "are without prejudice to further inquiry and action by the Commission's Enforcement Bureau." [34]

19. Inconsistencies between Maritime's representations and those contained in the filings by MariTEL raise further questions about Maritime's truthfulness. In Maritime's initial filings, it failed to disclose MariTEL as an entity under Donald DePriest's control (affirmatively denying such control), and therefore never attributed MariTEL's revenues to Maritime for the purposes of its designated entity showing. There is evidence that, contrary to Maritime's assertions, Mr. DePriest controlled MariTEL through sophisticated corporate structuring.[35]

[20] *Auction of Automated Maritime Telecommunications System Licenses Closes, Winning Bidders Announced for Auction No. 61,* Public Notice, 20 FCC Rcd 17066 (August 23, 2005).

[21] *See Maritime Communications/Land Mobile, LLC,* Petition to Deny Application FCC File No. 0002303355, at 3 (filed November 2005). Petitioners also alleged that Maritime failed to construct and/or operate one or more of its site-based stations in compliance with §§ 1.955(a) and 80.49(a) of the Commission's rules. *See* 47 CFR 1.955(a) and 80.49(a).

[22] *Maritime Communications/Land Mobile, LLC,* Order, 21 FCC Rcd 8794, 8798 n.39 (WTB PSCID 2006). The spousal affiliation rule, 47 CFR 1.2110(c)(5)(iii)(A), provides that "[b]oth spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States."

[23] *See* long-form application, as amended Aug. 21, 2006 ("amended long-form application").

[24] *See* Attachment to amended long-form application at 1. According to the Attachment to the Amended Application, Mr. DePriest controls American Nonwovens Corporation (ANC), which had average gross revenues for the relevant three-year period of $9,838,403. As to Mr. DePriest's role in Maritime, we note that Maritime has variously claimed and denied that he served as an officer and a director of the company. *See Maritime Communications/Land Mobile LLC,* Order on Reconsideration, 22 FCC Rcd 4780, 4783 n.35 (WTB Mobility Division 2007), *recon and review pending* ("Order on Reconsideration").

[25] *Maritime Communications/Land Mobile, LLC,* Opposition to Petition for Reconsideration, filed September 18, 2006 (Maritime September 2006 Opposition).

[26] *Id.* at 10–11.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *See* WTB November 2006 Order.

[31] Petition for Reconsideration filed jointly by Warren C. Havens, Intelligent Transportation & Monitoring Wireless, LLC, AMTS Consortium, LLC, Telesaurus-VPC, LLC, Telesaurus Holdings GB, LLC, and Skybridge Spectrum Foundation (filed Dec. 27, 2006).

[32] *See* Order on Reconsideration, 22 FCC Rcd at 4783 n.35.

[33] *Id.*

[34] *Id.* On April 9, 2007, the Petitioners filed an Application for Review of the Order on Reconsideration, which is still pending.

[35] On June 12, 2008, three years after the filing of Maritime's initial short-form application, MariTEL, Inc. filed a transfer of control application with the Commission. The application included an exhibit describing the transaction, which stated that "control of MariTEL * * * will pass from Donald DePriest and MCT Investors, LP to the shareholders of MariTEL as a group. Mr. DePriest has controlled MariTEL through a combination of direct investments and his role as General Partner of MCT Investors, LP." *See* MariTEL, Inc. Exhibit to FCC Form 603, Transfer of Control Application, filed June 12, 2008. Although Maritime argued that Donald DePriest did not control MariTEL, the representation in the MariTEL transfer of control application is consistent with information provided by MariTEL in earlier FCC Form 602 ownership disclosure filings. For example, in its FCC Form 602

Continued

20. As a consequence of the myriad questions as to the ownership of Maritime and of the attributable revenues of Donald DePriest, WTB, on August 18, 2009, directed Donald DePriest to produce, among other things, the following information:

Identify and describe all business entities, of whatever form, that have been controlled by you during the relevant period. For purposes of this question, you are deemed to have controlled any entity in which you held a 50.0% or more ownership interest, or served as a director or officer, or served as a general partner, or exercised *de facto* control in any way at any time during the relevant period.

State whether all of the interests held by you that should have been disclosed in the [Maritime] Application, as amended, FCC File No. 0002303355, were disclosed in the [Maritime] Application. Identify any interests and entities that should have been disclosed in the [Maritime] Application as attributable to you, but were not so disclosed. To the extent you have personal knowledge of the matter, indicate the reason why each such entity was not disclosed in the [Maritime] Application. For each such entity, except those entities that were required to be disclosed only under 47 CFR 1.2112(b)(1)(ii) and no other rule, provide its annual gross revenues for each of the three calendar years 2002, 2003, and 2004.[36]

In his response, dated September 30, 2009, Donald DePriest revealed more than two dozen entities which he controlled or in which he served as an officer or director. He also indicated that he had served as Chairman of a company doing business as MCT Corp. during the relevant three-year period, but did not provide any revenue information related to this entity.[37]

21. According to publicly available records, MCT Corp. was registered as a Delaware corporation on February 15, 2000.[38] Documents filed in the Commonwealth of Virginia, where MCT Corp. did business, identify Donald DePriest as having served as an officer, director, and the Chairman of MCT Corp.[39] MCT Corp. was dissolved in 2007, after being acquired by Teliasonera Acquisitions Corp. According to information provided by Donald DePriest, MCT Corp. was, among other things, [REDACTED].[40]

22. Simultaneously with the letter to Donald DePriest, on August 18, 2009, WTB posed the same questions to Maritime set forth in paragraph 20 above. By letter dated September 30, 2009, Maritime responded to WTB,[41] revealing more than two dozen additional entities in which Donald DePriest was involved that it had not previously disclosed.[42] Maritime maintained that none of the additional entities had enough revenues during the applicable time period to undermine its claimed entitlement to a "small business" bidding credit in Auction No. 61.[43] Notably, Maritime made no mention of MCT Corp. in its response.

2. Enforcement Bureau Investigation

23. Given the lingering questions about Maritime's entitlement to a bidding credit in Auction No. 61 and Maritime's dilatory disclosures about the full range of Donald DePriest's interests, WTB referred the matter to the Enforcement Bureau (EB) for investigation in late 2009. On February 26, 2010, EB directed a letter of inquiry (LOI) to Maritime.[44] Among other things, the LOI directed the production of supporting documentation to verify the revenues of all entities controlled by Donald DePriest, including MCT Corp. On March 29, 2010, Maritime responded to EB's LOI and provided records and financial data.[45] In its response, Maritime indicated, among other things, that it had not identified MCT Corp. previously as among those entities controlled by Donald DePriest because it had "relied on counsel to prepare and file the application and it did not receive any instructions regarding the bidding credit calculations or any information indicating that there would be spousal attribution of revenues."[46] Maritime further stated that "it was unaware of its need to supply revenue data."[47]

24. On February 26, 2010, EB also issued a letter of inquiry to Donald DePriest seeking additional information about his interests and revenues.[48] Specifically, EB's inquiry was designed to explore Mr. DePriest's prior statement that he had served as Chairman of MCT Corp. and sought documentation of the aggregate gross revenues of MCT Corp. during the 2002–2004 calendar years. In response to EB, Mr. DePriest provided financial information suggesting that MCT Corp. had gross revenues in each of the three relevant years [REDACTED].[49] In addition, Mr. DePriest offered various explanations of his role in MCT: that he was a "non-executive chairman of MCT Corp.," that his "post as chairman carried no executive duties," and [REDACTED].[50]

25. Subsequently, EB issued a supplemental letter of inquiry to Mr.

---

ownership disclosure filings submitted on March 13, 2001, which apparently remained current up until the time the MariTEL transfer of control was consummated in 2008, MariTEL indicated that MCT Investors, LP held 58.3% of MariTEL's issued and outstanding voting stock (and 26.1% of all stock, voting and non-voting), that MedCom Development Corporation was the sole general partner of MCT Investors, LP, and that Donald DePriest was the sole shareholder of MedCom Development Corporation. *See, e.g.,* FCC File No. 0002080704 (filed Mar. 13, 2001).

[36] *See* Letter from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Donald R. DePriest, dated August 18, 2009.

[37] *See* Letter from Donald R. DePriest, to Jeffrey Tobias, *Esq.,* Attorney, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated September 30, 2009, at 11 ("Donald DePriest Response to WTB").

[38] Certificate of Incorporation of MCT Corp., filed February 15, 2000, with the State of Delaware, Secretary of State, Division of Corporations.

[39] *See* 2002–2004 Annual Reports filed by MCT Corp. with the Commonwealth of Virginia, State Corporation Commission.

[40] *See* Letter from Donald R. DePriest, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated March 29, 2010.

[41] *See* Letter from Sandra DePriest, to Jeffrey Tobias, *Esq.,* Attorney, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated September 30, 2009 ("Maritime Response to WTB").

[42] *Id.* These companies included, among others, Wireless Properties, Inc., Wireless Properties of Virginia, Inc., Wireless Properties—East, Inc., Wireless Properties—West, Inc., Wireless Properties—Upper Midwest, Inc., Cellular and Broadcast Communications, Inc., MCT Investors, LP, BD Partners, CD Partners, Tupelo Broadcasting Corporation, Transition Funding, LLC, and WJG Telephone Co., Inc.

[43] *Id.* We note that the Commission's rules do not provide an exception to the designated entity ownership disclosure requirements for otherwise disclosable entities that have no gross revenues. *See* 47 CFR 1.2112(b)(1)(iv). Thus, Maritime was required to disclose information about all applicable entities, regardless of their gross revenues. Without such disclosures neither the Commission nor interested third-parties can test an applicant's eligibility claims.

[44] *See* Letter from Gary Schonman, Special Counsel, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Dennis C. Brown, *Esq.,* counsel for Maritime Communications/Land Mobile, LLC, dated February 26, 2010.

[45] *See* Letter from Sandra DePriest, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated March 29, 2010 ("Sandra DePriest March 29 Response Letter").

[46] *See id.* at 8.

[47] *Id.*

[48] *See* Letter from Gary Schonman, Special Counsel, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Donald R. DePriest, dated February 26, 2010.

[49] Donald DePriest requested confidential treatment of the exact amounts of the company's gross revenues pursuant to § 0.459 of the Commission's rules, 47 CFR 0.459. *See* Letter and Request for Confidential Treatment from Dennis C. Brown, *Esq.,* Counsel for Donald DePriest, to P. Michele Ellison, Chief, Enforcement Bureau, Federal Communications Commission, dated March 29, 2010. We need not disclose this information in the context of this Hearing Designation Order, and consequently, we will defer action on the confidentiality request. *See* 47 CFR 0.459(d)(3).

[50] *See* Letter from Donald DePriest, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated March 29, 2010; *See also* Letter from Patricia J. Paoletta and Jonathan B. Mirsky, Counsel to Wireless Properties of Virginia, Inc. and Maritime Communications/Land Mobile, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated December 29, 2010, and Declarations at Exhibit B.

DePriest to further investigate the extent of his participation in MCT Corp.[51] In a December 29, 2010 supplemental response—submitted more than four years after WTB directed disclosure of all attributable interests and providing information contrary to prior assertions—Mr. DePriest disclosed for the first time that [REDACTED].[52] The December 30, 2010 supplemental response also disclosed for the first time that, in his capacity as Chairman, he had the authority to [REDACTED].[53]

26. Mr. DePriest also provided documentation related to MCT Corp., including but not limited to company bylaws, articles of incorporation, a listing of officers, directors and shareholders, MCT Corp.'s 2002 private placement memorandum, and related corporate documents. The documents also appear to conflict with Mr. DePriest's assertions that [REDACTED] and that, as Chairman, he did not have any executive duties. The materials indicate, among other things, that the Chairman of MCT Corp. [REDACTED],[54] that Mr. DePriest was in fact listed as an officer and director of MCT Corp. in filings with the Commonwealth of Virginia, State Corporation Commission, [REDACTED].[55]

III. Discussion

A. Applicable Legal Standard

27. Section 312(a)(2) of the Communications Act provides that the Commission may revoke any license if "conditions com[e] to the attention of the Commission which would warrant it in refusing to grant a license or permit on the original application."[56] The character of the applicant is among those factors that the Commission considers in its review of applications to determine whether the applicant has the requisite qualifications to operate the station for which authority is sought.[57] Therefore, any character defect that would warrant the Commission's refusal to grant a license or permit in the original application would warrant the Commission's determination to revoke a license or permit.

28. In considering an applicant's character, one of the Commission's primary purposes is to ensure that licensees will be truthful in their future dealings with the Commission. Misrepresentation and lack of candor raise serious concerns as to the likelihood of such truthfulness.[58] Section 1.17(a)(1) of the Commission's rules states that no person shall, "in any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading."[59] In addition, § 1.17(a)(2) of the Commission's rules provides that no person shall, "in any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading."[60] In assessing an applicant's character, the Commission may consider a range of evidence, including the truthfulness of an applicant's responses to Commission forms and inquiries, and the accuracy of an applicant's certifications.[61]

29. Pursuant to § 1.2112 of the Commission's rules,[62] an auction applicant is required to disclose certain ownership information to the Commission in its pre-auction short-form and post-auction long-form applications. Generally, under § 1.2112(a) of the Commission's rules, the applicant must identify, among other things, the real parties in interest to the application, including the identity of all persons or entities directly or indirectly owning or controlling the applicant. Indeed, the Commission has stated that "we continue to believe that detailed ownership information is necessary to ensure that applicants claiming designated entity status in fact qualify for such status, and to ensure compliance with spectrum caps and other ownership limits. Disclosure of ownership information also aids bidders by providing them with information about their auction competitors and alerting them to entities subject to our anti-collusion rules."[63] The Commission has further noted that its rules "provide specific guidance to applicants, to provide transparency at all stages in the competitive bidding and licensing process; and, finally to ensure that the Commission, the public, and interested parties, are aware of the real party or parties in interest before the Commission acts on a pending application."[64]

[51] *See* Letter from Gary Schonman, Special Counsel, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Donald R. DePriest, dated December 15, 2010.

[52] [REDACTED].

[53] [REDACTED].

[54] [REDACTED].

[55] *See* Letter and Request for Confidential Treatment from Patricia J. Paoletta and Jonathan B. Mirsky, Counsel to Wireless Properties of Virginia, Inc. and Maritime Communications/Land Mobile, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated February 10, 2011.

[56] 47 U.S.C. 312(a)(2).

[57] *See, e.g., Worldcom, Inc.,* 18 FCC Rcd 26484, 26493 para. 13 (2003) (endorsing the use of the Commission's character policy in the wireless and other common carrier contexts); *See also Policy Regarding Character Qualifications in Broadcast Licensing,* Report, Order and Policy Statement, 102 FCC 2d 1179, 1210–11, para. 60 (1986), *recon. denied,* 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Ass'n for Better Broadcasting v. FCC,* No. 86–1179 (D.C. Cir. 1987), *recon. granted in part,* 5 FCC Rcd 3252 (1990), *recon. on other* grounds, 6 FCC Rcd 3448 (1991), *modified on other grounds,* 7 FCC Rcd 6564 (1992) ("Character Policy Statement").

[58] *Character Policy Statement,* 102 FCC 2d 1179 (1986). The fundamental importance of truthfulness and candor on the part of applicants and licensees in their dealings with the Commission is well established. *See FCC* v. *WOKO, Inc.,* 329 U.S. 223 (1946); *Lebanon Valley Radio, Inc.,* Decision, 35 FCC 2d 243 (Rev. Bd. 1972); *Nick J. Chaconas,* Decision, 28 FCC 2d 231 (Rev. Bd. 1971).

[59] 47 CFR 1.17(a)(1).

[60] 47 CFR 1.17(a)(2).

[61] *See supra* note 57.

[62] 47 CFR 1.2112.

[63] *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures,* Third Report and Order, Memorandum Opinion and Order and Second Further Notice of Proposed Rule Making, 13 FCC Rcd 10274 para. 73 (1997).

[64] *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures,* Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order (2003), 18 FCC Rcd 10180, 10214 para. 50 (citations omitted). The Commission has explained that the test for determining the real party in interest to an application is whether that party has an ownership interest in the applicant or will be in a position to actually or potentially control the operation of the station. *See Video/Multipoint, Inc. for Authority to Construct and Operate Multichannel Multipoint Distribution Service Stations on the F-Group Channels at Richmond, Virginia and Syracuse, New York,* Memorandum Opinion and Order, 7 FCC Rcd 5313 para. 7 (1992) (citing *San Joaquin Television Improvement Corp.,* 2 FCC Rcd 7004, 7008 (1987) and *KOWL, Inc.,* 49 FCC 2d 962, 964 (1974)); *Applications of David Lausten and Broadcast Data Corporation for Authority to Construct and Operate Two Multichannel Multipoint Distribution Service Stations on the E-Group Channels and the F-Group Channels for Aberdeen, South Dakota,* Memorandum Opinion and Order, 3 FCC Rcd 2053 para. 8 (1988); Instructions to FCC Form 601 at 15 (defining real party in interest as a person who "has an ownership interest, or will be in a position to actually or potentially control the operation of the station.") (citing *Astroline Communications Co. Ltd. Partner* v. *FCC,* 857 F.2d 1556, 1564 (D.C. Cir. 1988), citing Applications of Georgia Public Telecommunications Commission, *et al.,* MM Docket No. 89–337, 7 FCC Rcd 7996 (1992); Applications of Madalina Broadcasting, *et al.,* MM Docket No. 91–100, 8 FCC Rcd 6344 (1993)); *Heitmeyer* v. *FCC,* 95 F. 2d 91, 99 (D.C. Cir. 1937) (stating that "one of the most powerful and effective methods of control of any business, organization, or institution, and one of the most potent causes of involuntary assignment of its interests, is the control of its finances"); *See also* Black's Law Dictionary 874 (6th ed. 1991) (A "real party in interest" is "a person who will be entitled to benefits of action if successful, that is, the one who is actually and substantially interested in subject

Continued

30. In the auction context, the Commission may award bidding credits to eligible designated entities.[65] Accordingly, the standard disclosures required by § 1.2112(a) of the Commission's rules are expanded in § 1.2112(b) of the Commission's rules for entities claiming designated entity status.[66] Pursuant to § 1.2112(b) of the Commission's rules, if the applicant is seeking designated entity status, it must also provide additional ownership-related information in the form of, among other things, a list of any FCC-regulated entities in which any controlling principal of the applicant owns a 10 percent or greater interest or a total of 10 percent or more of any class of stock, warrants, options, or debt securities.[67] In addition to this requirement, however, § 1.2112(b) of the Commission's rules also requires that applicants seeking designated entity status list separately and in the aggregate the gross revenues of the applicant, its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship.[68] Applicants seeking designated entity status must satisfy these two disclosure requirements in both their short- and long-form applications.

31. In addition to strict compliance with the Commission's general ownership disclosure provisions in § 1.2112(a) of the Commission's rules, and expanded, designated entity-related, ownership requirements in § 1.2112(b) of the Commission's rules, all auction applicants seeking designated entity status for the purpose of claiming a bidding credit must also comply with § 1.2110 of the Commission's rules.[69] Section 1.2110 of the Commission's rules sets forth, among other things, attribution disclosure requirements.[70] Pursuant to § 1.2110(b) of the Commission's rules, an applicant seeking designated entity status must disclose in its pre-auction short-form and post-auction long-form applications the gross revenues for each of the previous three years of the applicant, its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship.

32. For the purposes of §§ 1.2110 and 1.2112 of the Commission's rules, a controlling interest includes individuals with either *de jure* or *de facto* control of the applicant.[71] Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them under the spousal affiliation provisions of § 1.2110(c)(5)(iii)(A) of the Commission's rules.[72] Pursuant to § 1.2110(c)(5)(i) of the Commission's rules, an individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant if such individual or entity directly or indirectly controls or has the power to control the applicant.[73] In this regard, the Commission has stated unequivocally that affiliates of controlling interests will be considered affiliates of the applicant.[74] In addition, pursuant to § 1.2110(c)(5)(ii)(B) of the Commission's rules, control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors.[75] Consequently, entities that the spouse of an applicant either directly or indirectly controls or has the power to control must be disclosed to the Commission, and the gross revenues for each of the previous three years of such entities will be considered in determining whether the applicant is entitled to a bidding credit. An applicant that applies as a designated entity pursuant to § 1.2110 of the Commission's rules must, under § 1.2105(a)(2)(iv) of the Commission's rules, provide a statement to that effect and a declaration under penalty of perjury that it is qualified as a designated entity under § 1.2110 of the Commission's rules.[76]

33. Under § 1.65 of the Commission's rules,[77] an applicant is responsible for the continuing accuracy and completeness of the information furnished in a pending application or in Commission proceedings involving a pending application. Whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant must, within 30 days, amend its application so as to furnish the additional or correct information.[78] For the purposes of § 1.65 of the Commission's rules, an application is "pending" before the Commission from the time it is accepted for filing until a Commission grant (or denial) is no longer subject to reconsideration by the Commission or review by any court.[79]

34. Finally, pursuant to section 309(e) of the Act,[80] the Commission is required to designate an application for evidentiary hearing if a substantial and material question of fact is presented regarding whether grant of the application would serve the public interest, convenience, and necessity. Therefore, if there exists a substantial and material question of fact as to any

matter as distinguished from one who has only nominal, formal, or technical interest in or connection with it").

[65] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* Second Report and Order, 9 FCC Rcd 2348.

[66] 47 CFR 1.2112.

[67] 47 CFR 1.2112(b)(1)(ii) (for the short-form application); 47 CFR 1.2112(b)(2)(ii) (for the long-form application).

[68] 47 CFR 1.2112(b)(1)(iv) (for the short-form application); 47 CFR 1.2112(b)(2)(v) (for the long-form application). It is important to note that, unlike § 1.2112(b)(ii) of the Commission's rules, this requirement extends to all such entities and is not limited to FCC-regulated entities.

[69] 47 CFR 1.2110.

[70] While the attribution disclosure requirements in § 1.2110 of the Commission's rules apply equally to all auction applicants seeking designated entity status, the extent of the bidding credit to which a particular auction applicant might be entitled varies from service to service. In the instant case, Auction No. 61 involved the auction of licenses in the AMTS service. Under the AMTS service-specific provisions contained in § 80.1252 of the Commission's rules, 47 CFR 80.1252, bidding credits were available to very small businesses and small businesses. A bidder with attributed average annual gross revenues of $3 million or less for the preceding three years was characterized as a very small business and eligible to receive a 35 percent discount on its winning bids. A bidder with attributed average annual gross revenues of more than $3 million but less than $15 million for the preceding three years was considered a small business and eligible to receive a 25 percent discount on its winning bids. A bidder with attributed revenues of $15 million or more for the preceding three years was not eligible for any bidding credit. *See also Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005,* Public Notice, 20 FCC Rcd 7811 (WTB 2005).

[71] 47 CFR 1.2110(c)(2).

[72] 47 CFR 1.2110(c)(5)(iii)(A).

[73] 47 CFR 1.2110(c)(5)(i).

[74] *See Amendment of Part 1 of the Commission's Rules—Competitive Bidding* Procedures, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making, 15 FCC Rcd 15293, 15323–24, para. 59 (2000) (citations omitted), in which the Commission stated:

> We will adopt as our general attribution rule a "controlling interest" standard for determining which applicants qualify as small businesses. Under this standard, we will attribute to the applicant the gross revenues of its controlling interests and their affiliates in assessing whether the applicant is qualified to take advantage of our small business provisions, such as bidding credits. We note that operation of our definition of "affiliate" will cause all affiliates of controlling interests to be affiliates of the applicant. We believe that this approach is simpler and more flexible than the previously used control group approach, and thus will be more straightforward to implement. Moreover, application of the "controlling interest" standard will ensure that only those entities truly meriting small business status qualify for our small business provisions. We used this same approach in the attribution rules for the LMDS, 800 MHz SMR, 220 MHz, VHF Public Coast and LMS auction proceedings.

[75] 47 CFR 1.2110(c)(5)(ii)(B).

[76] 47 CFR 1.2105(a)(2)(iv).

[77] 47 CFR 1.65.

[78] *Id.*

[79] *Id.*

[80] 47 U.S.C. 309(e).

of the matters enumerated above, the Commission must designate the matter for an evidentiary hearing.

B. Analysis of Relevant Facts

1. Failure To Disclose Real Party in Interest

35. As indicated above, under § 1.2112(a)(1) of the Commission's rules, Maritime was required to identify, among other things, the real parties in interest to its application, including the identity of all persons or entities directly or indirectly owning or controlling the applicant.[81] Section 1.2112(a)(1) of the Commission's rules states in pertinent part:

(a) Each application to participate in competitive bidding (*i.e.,* short-form application (see 47 CFR 1.2105)), or for a license, authorization, assignment, or transfer of control shall fully disclose the following:

(1) List the real party or parties in interest in the applicant or application, including a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant;

36. The requirement to disclose the real party in interest has been a longstanding requirement for wireless licenses.[82] The focus of the Commission's real party in interest analysis is whether there has been an accurate and complete identification of the true principals of the applicant.[83] As the Commission has stated, "a real party in interest issue, by its very nature, is a basic qualifying issue in which the element of deception is necessarily subsumed."[84] Similarly, the Commission has noted that "both the potential for deception and the failure to submit material information can undermine the Commission's essential licensing functions."[85]

37. In its short- and long-form applications filed in 2005, Maritime identified only Sandra DePriest as having an interest in the company. Maritime did not disclose any involvement by Sandra DePriest's husband, Donald DePriest. Maritime's short-form application states:

One hundred percent of the membership interests in Maritime Communications/Land Mobile, LLC are owned by S/RJW Partnership, Ltd. The general partner in S/RJW Partnership, Ltd. is Communications Investments, Inc. One hundred percent of the shares in Communications Investments, Inc. are owned by Sandra M. DePriest. One hundred percent of the partnership shares in S/RJW Partnership, Ltd. are owned by Sandra M. DePriest.

Sandra M. DePriest is the sole officer, director and key management personnel of Maritime Communications/Land Mobile, LLC. Sandra M. DePriest is the sole key management personnel of S/RJW Partnership, Ltd. Sandra M. DePriest is the sole officer, director and key management personnel of Communications Investments, Inc.[86]

38. Maritime's long-form application reiterated these claims and included further certifications as to Maritime's ownership disclosures and bidding credit eligibility, including that "all statements made in this application and in the exhibits, attachments, or documents incorporated by reference are *material,* * * * and are true, complete, correct, and made in good faith."[87] In various other pleadings, Maritime repeatedly represented that Sandra DePriest has held 100 percent control of Maritime at all relevant times.[88] Maritime also claimed that Donald and Sandra DePriest "live separate economic lives" and that Donald DePriest has no ownership interest in and is not an officer nor a director of Maritime.[89] While Sandra DePriest may have been the nominal owner, these statements, when considered in light of the evidence, appear to be misleading because they suggest that Donald DePriest played a limited role in Maritime and therefore that his interests were not relevant to the designated entity and bidding credit analysis. Contrary to these claims, disclosure of Donald DePriest (and attribution of associated revenues) appears to have been required by two independent sections of our rules—the spousal affiliation rule in § 1.2110(c)(5)(iii)(A) of the Commission's rules and the real party in interest disclosure requirements of § 1.2112(a) of the Commission's rules. Maritime's apparent failure to identify either Donald DePriest or his associated revenues in its pre-auction short-form and post-auction long-form applications, together with the fact that Maritime repeatedly provided incomplete and potentially misleading information concerning Donald DePriest during the course of WTB's and EB's investigations, raise significant and material questions of fact about Maritime's qualifications, including its basic character qualifications, to hold Commission licenses.

39. *Spousal Affiliation.* In 2006, WTB concluded that Maritime should have disclosed Donald DePriest and his revenues under the spousal affiliation provisions of § 1.2110(c)(5)(iii)(A) of the Commission's rules.[90] Maritime had claimed that the spousal affiliation rule did not apply because of the separation between Donald and Sandra DePriest's economic lives, but filed a request for waiver of the rule "in an abundance of caution." In rejecting Maritime's claims, WTB explained that the spousal affiliation rule is a "bright-line standard,"[91] emphasizing the Commission's longstanding conclusion that "[it] will in every instance attribute the financial interests of an applicant's spouse to the applicant."[92] WTB stressed that § 1.2110(c)(5)(iii)(A) of the Commission's rules required the attribution of Donald DePriest's revenues to Maritime for the purposes of

[81] 47 CFR 1.2112(a)(1).

[82] *See e.g.,* 47 CFR 21.13, 25.522, 25.531, 90.123 (1993) (Domestic Public Fixed Radio Services); 47 CFR 101.19 (1998) (Fixed Microwave Services); 47 CFR 22.108 (1998) (Public Mobile Services); 47 CFR 1.914 (1994) (generally requiring that applications "contain full and complete disclosures with regard to the real party or parties in interest and as to all matters and things required to be disclosed by the application forms"). Although § 1.914 of the Commission's rules was subsequently deleted in 1999, the real party in interest disclosure language was incorporated into § 1.919(e) of the Commission's rules and applied to applicants for wireless licenses where § 1.2112 of the Commission's rules was not applicable. 47 CFR 1.919(f). In 1994, the requirement to fully disclose the real party in interest was incorporated into the competitive bidding rules. *Competitive Bidding Fifth Report and Order,* 9 FCC Rcd 5532, 5656 (1994); 47 CFR 24.813 (1994).

[83] *Intermart Broadcasting Pocatello, Inc.,* Memorandum Opinion and Order, 23 FCC Rcd 8822, 8826–27 (2008); *See also Arnold L. Chase,* Decision, 5 FCC Rcd 1642, 1648 n.5 (1990) (concern in a real party in interest inquiry is whether an applicant is, or will be, controlled in a manner that differs from the proposal before the Commission).

[84] *See Fenwick Island Broadcast Corp. & Leonard P. Berger,* Decision, 7 FCC Rcd 2978, 2979 (Rev. Bd. 1992) (citation omitted); *See also Lowrey Communications, L.P.,* Decision, 7 FCC Rcd 7139, 7147 n.32 (Rev. Bd. 1992) (subsequent history omitted) (*sine qua non* of a real party in interest issue is a showing that a party not named as a principal holds either an undisclosed ownership interest or the functional equivalent thereof).

[85] *Intermart Broadcasting Pocatello, Inc.,* 23 FCC Rcd at 8827 para. 8.

[86] *See* short-form application, Explanation of Ownership. Maritime also certified that it had provided separate gross revenue information for itself, for each of its officers, directors, controlling interests and the affiliates of its controlling interests, and for each affiliate of each of its officers, directors, and other controlling interests. *See* short-form application, Gross Revenues Confirmation.

[87] *See* long-form application.

[88] *See, e.g., Maritime Communications/Land Mobile, LLC,* Opposition to Petition to Deny Application FCC File No. 0002303355 (September 18, 2006) ("[a]t all times from the filing of [Maritime's] Form 175 application to the date of the filing of the instant opposition, Sandra M. DePriest has held one hundred percent control of [Maritime]").

[89] *See* amended long-form application.

[90] 47 CFR 1.2110(c)(5)(iii)(A).

[91] WTB November 2006 Order at 13736 para. 5 ("section 1.2110(c)(5)(iii)(A) of the Commission's rules clearly requires that the revenues of Mr. DePriest * * * be attributed to [Maritime]").

[92] *See Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* Second Memorandum Opinion and Order, 9 FCC Rcd 7245, 7262 para. 100 (1994).

determining Maritime's designated entity status.[93]

40. Although § 1.2110(c)(5)(iii)(A) of the Commission's rules establishes a bright-line standard that would apply to Maritime irrespective of any claim of the DePriests' supposed "separate economic lives," this claim itself appears to be inaccurate. The record suggests that since as early as the 1980s, the DePriests' professional and economic interests have been intertwined. This apparent inconsistency raises further questions as to whether Maritime's disclosure failures were calculated to mislead the Commission into awarding Maritime a higher bidding credit than was warranted, and thus bears on its qualifications to hold Commission licenses.

41. *Real Party in Interest.* Furthermore, even if the DePriests had not been married, the information before us suggests that Donald DePriest may have been an undisclosed real party in interest behind Maritime. In this regard, the record indicates that Donald DePriest often acted on behalf of Maritime, binding the company in significant respects.[94] For example, in his role as "Manager" of Maritime, Donald DePriest signed the incorporation filings for Maritime; [95] [REDACTED]; [96] issued [REDACTED]; [97] [REDACTED]; [98] [REDACTED].[99]

42. In addition, it appears that Communications Investments, Inc.—which indirectly owns Maritime—was until recently still led by Mr. DePriest as President. While Mr. DePriest claims to have transferred the stock of Communications Investments, Inc. to his wife, Sandra DePriest, and to have resigned as President just less than four months prior to the filing of Maritime's short-form application,[100] contemporaneous submissions to the state of Mississippi (signed by either Sandra or Donald DePriest) reflect that Mr. DePriest was President of Communications Investments Inc. until 2008.[101] Therefore, during Auction No. 61 Mr. DePriest appears to have served as President of the general partner of Maritime. In sum, while Mrs. DePriest was nominally identified as the "sole officer, director, and key management personnel" of Maritime, it appears that Donald DePriest may have been a real party in interest behind Maritime—especially given the evidence about Maritime's corporate structure as well as the evidence suggesting that Mr. DePriest was integrally involved in significant financial and operational decisions and otherwise played a much larger role in Maritime than the DePriests initially disclosed. Accordingly, an appropriate issue will be designated to determine whether Maritime willfully violated § 1.2112 of the Commission's rules.

2. Failure To Disclose Attributable Interests and Revenues

43. As indicated above, § 1.2110 of the Commission's rules establishes the core requirements for obtaining bidding credits as a designated entity. It requires any entity seeking a bidding credit to establish that it is entitled to such a credit by providing the gross revenues (for each of the three years prior to an auction) of the applicant, its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship.[102] Pursuant to § 1.2110 of the Commission's rules, Maritime was required to disclose upfront in its short- and long-form applications the gross revenues of Donald DePriest and those of his affiliates. The record before us indicates that not only did Maritime fail to make the required disclosures, it appears to have engaged in a continued practice of obfuscation and misdirection, incrementally disclosing tidbits of information about the nature and extent of Donald DePriest's affiliates. The piecemeal and selective nature of Maritime's disclosures not only wasted precious Commission resources but essentially forced the Commission to repeatedly seek information which Maritime was legally required to provide.

44. Furthermore, we must question the plausibility of Maritime not understanding its legal disclosure obligations. In administering the initial stages of Auction No. 61, the Commission adopted several measures to ensure that participants knew and understood the relevant auction service rules and disclosure requirements, and made available several aids to assist bidders with the auction process.[103] For example, in an April 21, 2005 Public Notice, the Commission explained in great detail the rules and procedures attendant to participation in the auction. In relevant part, the Commission explained that "[p]rospective applicants must familiarize themselves thoroughly with the Commission's rules [and] with the procedures, terms and conditions * * * contained in [the] Public Notice." [104] The Public Notice emphasized, for example, that "[s]ection 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application." [105] The Public Notice also provided guidance to those participants seeking a bidding credit by explaining that, "for Auction No. 61, if an applicant claims eligibility for a bidding credit, the information provided will be used in determining whether the applicant is eligible for the claimed bidding credit," and that submission of the initial application "constitutes a representation by the certifying official * * * that the contents of the application, its

[93] WTB November 2006 Order at 13736 para. 1.

[94] *See* Letter from Sandra DePriest to Jeffrey Tobias, Esq., Attorney, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated September 30, 2009 (indicating that nine days after Maritime was formed, Mrs. DePriest designated Mr. DePriest to serve as manager/signer on behalf of Maritime); *See* Letter from Sandra DePriest to Marlene H. Dortch, Secretary, Federal Communications Commission, dated March 29, 2010 at 5–7 (see March 10, 2009 Maritime Meeting Minutes [REDACTED]).

[95] *See* Certificate of Formation, dated February 15, 2005, filed with the Delaware Secretary of State's Office (executed by Donald DePriest).

[96] [REDACTED].

[97] [REDACTED].

[98] [REDACTED].

[99] There is credible evidence suggesting that [REDACTED].

[100] *See* Maritime Response to WTB, Exhibit 6.

[101] *See* Communications Investments Inc., 2002 Annual Corporate Report, filed with the Mississippi Secretary of State on Mar. 20, 2002 (listing Donald DePriest as the President of Communications Investments, Inc.); Communications Investments Inc., 2003 Annual Corporate Report, filed with the Mississippi Secretary of State on April 1, 2003 (same); Communications Investments Inc., 2004 Annual Corporate Report, filed with the Mississippi Secretary of State on Mar. 16, 2004 (same); Communications Investments Inc., 2005 Annual Corporate Report, filed with the Mississippi Secretary of State on Feb. 16, 2005 (same); Communications Investments Inc., 2006 Annual Corporate Report, filed with the Mississippi Secretary of State on Mar. 10, 2006 (same); Communications Investments Inc., 2007 Annual Corporate Report, filed with the Mississippi Secretary of State on Mar. 19, 2007 (same); Communications Investments Inc., 2008 Annual Corporate Report, filed with the Mississippi Secretary of State on Jan. 20, 2008 (showing a change in the President from Donald DePriest to Sandra DePriest).

[102] 47 CFR 1.2110.

[103] Auction No. 61 was also the first to employ an extensive redesign of the Commission's Integrated Spectrum Auction System. The newly redesigned system included enhancements to the FCC Form 175 such as "discrete data elements in place of free-form exhibits and improved data accuracy through automated checking of FCC Form 175 applications" and allowed for easier navigation, customizable results, and improved functionality.

[104] *Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures for Auction No. 61,* Public Notice, 20 FCC Rcd 7811, 7816, (WTB 2005) ("Auction No. 61 Procedures Public Notice").

[105] Auction No. 61 Procedures Public Notice at 7818 (citing 47 CFR 1.65).

certifications and any attachments are true and correct."[106] Finally, the Public Notice gave detailed explanations for (a) Determining the size standards for bidding credits, (b) understanding ownership disclosure requirements, and (c) calculating bidding credit revenue disclosures.[107] The above-mentioned measures are only a sampling of the efforts that the Commission made to ensure that participants knew and understood the rules and requirements of Auction No. 61.[108]

45. Notwithstanding extensive Commission guidance directing otherwise, in its applications filed in 2005, Maritime disclosed only the interests of Sandra DePriest and her affiliates.[109] It took more than a year—and only after WTB determined that Maritime had run afoul of the "bright-line" spousal attribution provisions in § 1.2110 of the Commission's rules—for Maritime to amend its application, at staff direction, to disclose what the company represented, at that time, were the gross revenues of Donald DePriest and his affiliates.[110] In this amendment, Maritime stated, among other things, that Donald DePriest controlled just one company: American Nonwovens Corporation.[111] Several weeks later—and only in response to ongoing administrative litigation—Maritime belatedly acknowledged that Donald DePriest actually controlled three more entities: Charisma Broadcasting Co., Bravo Communications, Inc., and Golden Triangle Radio, Inc.[112] Some three years later—and only in response to a written request for information from WTB—Maritime divulged more than two dozen additional affiliates of Donald DePriest.[113] Several months thereafter—and only in response to an Enforcement Bureau letter of inquiry—Maritime disclosed information about Donald DePriest's involvement in MCT Corp.[114] The timing and substance of these disclosures raise material questions of fact about whether Maritime and its principals engaged in a pattern of deception and misinformation carefully designed to obtain and conceal an unfair economic advantage over competing auction bidders through the receipt of designated entity status and the associated bidding credit to which it may not have been entitled.

46. Moreover, the evidence reflects a conflict between Donald DePriest's assertions regarding the role that he played in MCT Corp. and other evidence received by the Commission. As noted above, in the record before us, Mr. DePriest initially acknowledged to WTB that he served as Chairman of MCT Corp.[115] When faced with EB's further inquiry, however, Mr. DePriest claimed that his role as MCT's Chairman was a limited one, *i.e.,* that he [REDACTED].[116] Similarly, Mr. DePriest claimed [REDACTED], while simultaneously submitting documentation MCT Corp. had filed with the Commonwealth of Virginia, State Corporation Commission reporting that he served as officer, director and as Chairman.[117] When confronted with this apparent inconsistency, Mr. DePriest claimed that [REDACTED].[118] In addition, while Mr. DePriest eventually conceded that [REDACTED], he simultaneously asserted that he [REDACTED].[119] We find that these various factual conflicts continue to raise questions, including with respect to overall credibility.

47. In light of the repeated inconsistencies between and among Mr. DePriest's own statements and the other evidence before us, we are unable to conclude that he did not control or have the ability to control MCT Corp. Mr. DePriest is variously identified as an officer and director of the company and there is no question that at various times he served as Chairman of the Board, [REDACTED]. The record also indicates that [REDACTED],[120] [REDACTED]. Furthermore, MCT Corp.'s bylaws indicate that [REDACTED].[121] Given our broad definition of "control" in the designated entity context which, pursuant to § 1.2110(c)(5) of the Commission's rules, can arise through stock ownership, occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors, substantial and material questions of fact as to Mr. DePriest's control of MCT Corp. remain, which are properly resolved by an independent trier of fact.

48. We also question whether Maritime has yet to provide a definitive list of, and accompanying financial data for, all of Donald DePriest's affiliates, as required by § 1.2110 of the Commission's rules.[122] Maritime was absolutely required to provide all relevant information about the revenues of Donald DePriest and his affiliates in the first instance, and its demonstrated propensity to withhold pertinent and requisite information raises questions about Maritime's basic qualifications to be and remain a Commission licensee.

49. Maritime's multiple failures to fulfill its disclosure obligations under §§ 1.2110 and 1.2112 of the Commission's rules raise particular concerns given the importance of maintaining the integrity of our spectrum auctions. We adopted carefully structured disclosure rules to

[106] The Public Notice also put bidders on notice that "[s]ubmission of false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution." *Id.* at 7828.

[107] *Id* at 17.

[108] On May 25, 2006, the Commission hosted an auction seminar (made available via webcast) and made available supplemental materials on the Commission's Web site. The Auction seminar included various presentations and accessible materials such as PowerPoint presentations on the Pre-Auction Process, Overview of AMTS Rules and Due Diligence, Legal, Technical Auction Rules, and Payment Process, Auction Bidding Procedures, and Post-Auction Process. On June 28, 2005, the Commission issued a second Public Notice that reiterated the need to update pending applications to maintain the completeness and accuracy of the application pursuant to § 1.65 of the Commission's rules. *See Auction of Automated Maritime Telecommunications Systems Licenses,* Public Notice, 20 FCC Rcd 11431, 11434 (2005). On July 22, 2005, the Commission released a further Public Notice, which, in addition to restating the section 1.65 requirement, also reminded participants that applicants claiming eligibility to receive a "small or very small business bidding credit should be aware that, following the auction they [would] be subject to more extensive reporting requirements contained in the Commission's Part 1 ownership disclosure rule" pursuant to § 1.2112(b)(2) of the Commission's rules. *See Auction of Automated Maritime Telecommunications Systems Licenses,* Public Notice, 20 FCC Rcd 12373, 12379 (2005). All of the Auction No. 61 materials made clear the rules, requirements, and procedures for participation, and emphasized the need for strict compliance with the rules.

[109] *See* short-form application and long-form application.

[110] *See* amended long-form application.

[111] *Id.*

[112] *See* Maritime September 2006 Opposition.

[113] *See* Maritime Response to WTB.

[114] *See* Sandra DePriest March 29 EB Response Letter.

[115] *See* Letter from Donald R. DePriest to Jeffrey Tobias, *Esq.,* Attorney, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated September 30, 2009.

[116] *See* Letter from Patricia J. Paoletta and Jonathan B. Mirsky, Counsel to Wireless Properties of Virginia, Inc. and Maritime Communications/Land Mobile, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated December 29, 2010, Exhibit B ("December 29 Letter").

[117] *See* 2002–2004 Annual Reports filed by MCT Corp. with the Commonwealth of Virginia, State Corporation Commission.

[118] *See* Letter from Patricia J. Paoletta and Jonathan B. Mirsky, Counsel to Wireless Properties of Virginia, Inc. and Maritime Communications/Land Mobile, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated January 25, 2011, Exhibit A.

[119] *See* December 29 Letter.

[120] [REDACTED].

[121] [REDACTED].

[122] The evidence suggests that Donald DePriest may have had an interest in several other companies not previously disclosed, including International Telecommunications Holdings Corporation, International Telecommunications Services Corporation, MCT Sibi Corp., UZLC Corp., and MCT Uzbekistan.

ensure that our auctions are conducted in a fair and transparent manner and that all applicants participate on an even playing field. When auction applicants undermine our disclosure rules, such actions threaten the very foundation upon which we conduct our auctions. While Maritime and its principals claim that these disclosure failures resulted from "mistaken beliefs," [123] "oversights," [124] or "good faith reliance on counsel," [125] they have provided no substantiation of these claims. We are also mindful that Maritime's principals are sophisticated business people,[126] that Maritime had multiple opportunities to provide the required information, and that Maritime had a significant financial motive to conceal Donald DePriest's revenues. When these realities are coupled with the allegations of the Petitioners and the corroborating information in the record, we conclude that there are material questions of fact as to whether all attributable interests and revenues were disclosed.

50. Accordingly, an appropriate issue will be designated to determine whether Maritime failed on multiple occasions to reveal material information in support of its claimed entitlement to a designated entity bidding credit, in willful and repeated violation of § 1.2110 of the Commission's rules. In addition, if it is determined that Maritime was not entitled to a bidding credit in Auction No. 61, the Administrative Law Judge shall determine whether Maritime should be ordered to repay the entire amount of its bidding credit plus all accrued interest to the United States Treasury.

[123] *See* Letter from Sandra DePriest to Brian J. Carter, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated March 29, 2010, at 9.

[124] *Maritime Communications/Land Mobile, LLC,* Opposition to Petition for Reconsideration, filed September 18, 2006, at 11.

[125] *See* Letter from Sandra DePriest to Marlene H. Dortch, Secretary, Federal Communications Commission, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated March 29, 2010, at 8.

[126] Donald DePriest has extensive experience in the communications industry and a long history of investing in multiple communications-related companies and ventures. Sandra DePriest is a former communications attorney. Donald DePriest founded Charisma Communications Corporation in 1982, serving as Chairman of the Board and President through the sale of its operations to McCaw Communications in 1986 and 1987. Charisma developed and operated eleven cellular systems. Mr. DePriest created MCT Investors, LP in 1987 to develop, among other things, telecommunications ventures. He also served as Chairman of the Board of American Telecasting, Inc. which was sold to Sprint in 1999.

3. Misrepresentations and Lack of Candor

51. *False Certification and Section 1.2105 of the Commission's Rules.* As indicated above, § 1.2105 of the Commission's rules requires an applicant that applies as a designated entity pursuant to § 1.2110 of the Commission's rules to provide a statement to that effect and a declaration under penalty of perjury that it is qualified as a designated entity under § 1.2110 of the Commission's rules.[127] In its short-form application, Maritime made several certifications that now appear to have been false, or at a minimum, made without a reasonable basis for believing that the statements were correct and not misleading.[128] For example, Maritime certified that it provided gross revenues for all relevant interests, a statement later shown to be incorrect.[129] Maritime also asserted that it was eligible for a "very small business" bidding credit which was later partially rescinded.[130] In addition, in its long-form application, Maritime certified that "all statements made in the application and in the exhibits, attachments, or documents incorporated by reference are material, are part of [the] application, and are true, complete, correct, and made in good faith." [131] Maritime further certified that it "ha[d] current required ownership data on file with the Commission, [was] filing updated ownership data simultaneously with the application, or [was] not required to file ownership data under the Commission's rules." [132] In filing its long-form application, Maritime also took the opportunity to correct the name of one of the affiliate interests listed in its short-form application, but failed to provide any additional information regarding other disclosable interest holders.[133] Given the material and substantial questions that remain about Maritime's eligibility for designated entity status in Auction No. 61, we have grave concerns about whether Maritime falsely certified to such eligibility, in willful violation of § 1.2105 of the Commission's rules. Accordingly, an appropriate issue will be designated.

[127] 47 CFR 1.2105. *See also* 47 CFR 1.2110.

[128] *See* short-form application; *See also* notes 140–147 and accompanying text (discussing § 1.17(a)(2) of the Commission's rules, which require due diligence in preparing written submissions to the Commission).

[129] *See* short-form application.

[130] *Id. See also Maritime Communications,* 21 FCC Rcd at 13735.

[131] *See* long-form application.

[132] *Id.*

[133] *Id.*

52. *Misrepresentation/Lack of Candor and Section 1.17 of the Commission's Rules.* Section 1.17(a)(1) of the Commission's rules states that no person shall, in any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading.[134] We note that a misrepresentation is a false statement of fact made with the intent to deceive the Commission.[135] Lack of candor is a concealment, evasion, or other failure to be fully informative, accompanied by an intent to deceive the Commission.[136] A necessary and essential element of both misrepresentation and lack of candor is intent to deceive.[137] Fraudulent intent can be found from "the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity." [138] Intent can also be found from motive or logical desire to deceive. [139]

53. Section 1.17(a)(2) of the Commission's rules further requires that no person may provide, in any written statement of fact, "material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading." [140] Any person who has received a letter of inquiry from the Commission or its staff or is otherwise

[134] 47 CFR 1.17(a)(1).

[135] *Fox River Broadcasting, Inc.,* Order, 93 FCC 2d 127, 129 (1983); *Discussion Radio, Incorporated,* Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7435 (2004).

[136] *Fox River Broadcasting, Inc.,* 93 FCC 2d at 129; *Discussion Radio,* 19 FCC Rcd at 7435.

[137] *Trinity Broadcasting of Florida, Inc.,* Initial Decision, 10 FCC Rcd 12020, 12063 (1995); *Discussion Radio,* 19 FCC Rcd at 7435.

[138] *David Ortiz Radio Corp.* v. *FCC,* 941 F.2d 1253, 1260 (D.C. Cir. 1991)(quoting *Leflore Broadcasting Co.* v. *FCC,* 636 F.2d 454, 462) (D.C. Cir. 1980); *See also Discussion Radio,* 19 FCC Rcd at 7435.

[139] *See Joseph Bahr,* Memorandum Opinion and Order, 10 FCC Rcd 32, 33 (Rev. Bd. 1994); *Discussion Radio,* 19 FCC Rcd at 7435; *Black Television Workshop of Los Angeles, Inc.,* Decision, 8 FCC Rcd 4192, 4198 n. 41 (1993)(citing *California Public Broadcasting Forum* v. *FCC,* 752 F.2d 670, 679 (D.C. Cir. 1985); *Scott & Davis Enterprises, Inc.,* 88 FCC 2d 1090, 1100 (Rev. Bd. 1982)). Intent to deceive can also be inferred when the surrounding circumstances clearly show the existence of an intent to deceive. *Commercial Radio Service, Inc.,* Order to Show Cause, 21 FCC Rcd 9983, 9986 (2006)(citing *American International Development, Inc.,* Memorandum Opinion and Order, 86 FCC 2d 808, 816 n.39 (1981), *aff'd sub nom. KXIV, Inc.* v. *FCC,* 704 F.2d 1294 (DC Cir. 1983)).

[140] 47 CFR 1.17(a)(2).

the subject of a Commission investigation is subject to this rule.[141] In expanding the scope of § 1.17 of the Commission's rules in 2003 to include written statements that are made without a reasonable basis for believing the statement is correct and not misleading, the Commission explained that this requirement was intended to more clearly articulate the obligations of persons dealing with the Commission, ensure that they exercise due diligence in preparing written submissions, and enhance the effectiveness of the Commission's enforcement efforts.[142] Thus, even absent an intent to deceive, a false statement may constitute an actionable violation of § 1.17 of the Commission's rules if provided without a reasonable basis for believing that the material factual information it contains is correct and not misleading.[143]

54. The Commission and the courts have recognized that "[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing."[144] Full and clear disclosure of all material facts in every application is essential to the efficient administration of the Commission's licensing process, and proper analysis of an application is critically dependent on the accuracy and completeness of information and data which only the applicant can provide. Further, an applicant has a duty to be candid with all facts and information before the Commission, regardless of whether that information was elicited.[145] Similarly, a false certification may constitute a misrepresentation.[146] As the Commission has noted, "misrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission.[147]

55. In the instant case, Maritime claimed an entitlement in both its short-form and long-form auction applications to a "very small business" bidding credit in Auction No. 61, amounting to 35 percent of its winning bids. In support of this claimed entitlement, Maritime was required to provide to the Commission full and complete information, including information relating to gross revenues, about all entities having an attributable interest in Maritime.[148] The information before us indicates, however, that Maritime did not do so. Rather, in its short-form and long-form applications, as initially filed, Maritime disclosed only the personal interests of Sandra DePriest as well as the gross revenues of only two entities: Communications Investments, Inc., and S/RJW Partnership, L.P. Through its responses to WTB's and EB's investigations, Maritime has revealed that its initial short-form[149] and long-form[150] auction applications failed to present full and complete information about Maritime's interests.

56. As discussed in detail above, the information before us further indicates that Maritime failed to identify Donald DePriest as a disclosable interest holder in its Auction No. 61 applications as originally filed, notwithstanding that the power to control Maritime was imputed to him under the spousal affiliation rule[151] and that there are other indicia of control. For instance, as detailed in paragraph 41 above, the record shows that Donald DePriest appears to have acted as more than just an agent for Maritime, developing financial contacts, suggesting equipment vendors, and attending conventions on behalf of Maritime.[152] In addition, he guaranteed some of Maritime's debt obligations[153] and was authorized to enter into contracts on behalf of Maritime.[154] Clearly, Donald DePriest was more involved in what was nominally characterized as his wife's company than Maritime led the Commission to believe.

57. Moreover, it appears that, on a number of occasions, Maritime withheld information from the Commission related to the interests of Donald DePriest. In its auction applications as originally filed, Maritime revealed no interests of Donald DePriest. On August 21, 2006, at the prodding of WTB, Maritime revealed that Donald DePriest held an interest in just one company—American Nonwovens Corporation.[155]

---

[141] 47 CFR 1.17(b)(4).

[142] *In the Matter of Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission,* Report and Order, 18 FCC Rcd 4016, 4016 para. 1–2, 4021 para. 12 (2003), *recon. denied,* Memorandum Opinion and Order, 19 FCC Rcd 5790, *further recon. denied*, Memorandum Opinion and Order, 20 FCC Rcd 1250 (2004) ("Amendment of Section 1.17 of the Commission's Rules").

[143] *See id.* at 4017 para. 4 (stating that the revision to § 1.17 of the Commission's rules is intended to "prohibit incorrect statements or omissions that are the result of negligence, as well as an intent to deceive").

[144] *See, e.g., Contemporary Media Inc.* v. *FCC,* 214 F.3d 187, 193 (D.C. Cir. 2000) (citation omitted).

[145] *Fox River Broadcasting, Inc.,* 93 FCC 2d at 129.

[146] *San Francisco Unified School District,* Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334 para. 19 nn. 40–41 (2004).

[147] Commercial Radio Service, Inc, 21 FCC Rcd at 9986 (citing Policy Regarding Character Qualifications in Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licen*See*s, and the Reporting of Information Regarding Character Qualifications, Report, Order and Policy Statement, 102 FCC 2d 1179, 1210–11 para. 60 (1986)).

[148] 47 CFR 1.2110.

[149] Among other things, on its short-form application Maritime made statements that now appear to be misrepresentations or to lack candor, including: (1) Claiming eligibility as a "very small business" with gross revenues "between $0.00 and $3,000,000.00" in the "Bidding Credit Eligibility" section; (2) certifying that it "provided separate gross revenue information for itself, for each of [its] officers and directors, for each of [its] other controlling interests, for each of [its] affiliates, and for each affiliate of each of [its] officers, directors, and other controlling interests in the "Gross Revenues Confirmation" section; (3) stating that Sandra DePriest is the "sole officer, director and key management personnel of Maritime," although Mrs. DePriest later admits that Donald DePriest served as a manager for Maritime carrying out high-level tasks (*See supra* para. 41); (4) stating that Sandra DePriest is also the "sole officer, director and key management personnel of Communications Investments Inc.," although Donald DePriest is listed as the President and sole Director of Communications Investments Inc. on Annual Corporate Reports filed with the Secretary of the State of Mississippi until 2008 (*See supra* para. 42) in the attachment titled "Explanation of Ownership."

[150] Among other things, in its FCC 602 long-form application, Maritime made repeated statements (similar to those in its short-form application) that now appear to be misrepresentations or to lack candor. In addition, in an August 21, 2006 amendment to the long-form application submitted to "inform the Commission of the gross revenues of an entity controlled by Donald R. DePriest," Maritime stated that (1) "ANC is the only revenue producing entity which Don owns or controls;" (*See supra* para. 45) (2) "Sandra and Don live separate economic lives," although (a) many of the companies listed in the Mississippi Secretary of State database for which Donald DePriest served as an officer or director also list Sandra DePriest as having been an officer or agent, and (b) in one of Mr. DePriest's answers to the Feb. 26, 2010 EB inquiry, Mr. DePriest states that he and Sandra DePriest "have been involved in multiple radio services which are regulated by the Commission * * *."; (3) "Don DePriest does not, in fact, have any ownership interest in or control of MC/LM," although as referenced above, in addition to being one of three signatories on Maritime's bank account, Donald DePriest appears to have made significant corporate decisions and performed various management functions for Maritime (*See supra* para. 41). The amendment to the long-form application also fails to include certain Maritime employees listed in minutes executed on January 26, 2006, who by their titles appear to be officers. On March 29, 2009, in answer to EB's inquiry as to why MCT Corp. and its revenues had not been disclosed and declared under penalty of perjury, Donald DePriest stated that he "had no reason to believe that [his] role as non-executive chairman of MCT Corp. or any of the other entities in which [he] had an interest affected Sandra DePriest's position with the Commission." Donald DePriest made this statement after the November 2006 Order that required him to be listed as a disclosable interest holder for the purpose of determining Maritime's eligibility for bidding credits as a designated entity (irrespective of whatever actual role he played in Maritime), and prior to the Commission learning that Donald DePriest served as one of three members on the Executive Committee at MCT Corp.

[151] *See supra* para. 39 and 40 for discussion of the spousal affiliation rule.

[152] *See* Maritime Response to WTB at 7.

[153] *Id.*

[154] *See* Donald DePriest Response to WTB at 10.

[155] *See* amended long-form application.

Subsequently, on September 18, 2006, Maritime revealed three more companies in which Donald DePriest was involved—Charisma Broadcasting Co., Bravo Communications, Inc., and Golden Triangle Radio, Inc.[156] Questions continued to be raised about the veracity of Maritime's disclosures to the Commission even after its Auction No. 61 licenses were granted. Thus, on September 30, 2009, in its response to WTB's inquiry, Maritime acknowledged, for the first time, the existence of more than two dozen additional entities in which Donald DePriest was involved that it had not disclosed previously.[157] Even then, Maritime's representations failed to present full and complete information concerning its attributable interests. Most significantly, Maritime failed to disclose the existence of MCT Corp., an entity in which Donald DePriest served as an officer, as Chairman of the Board of Directors, and as a member of the company's Executive Committee. Maritime only disclosed MCT Corp. after the matter of Maritime's behavior became the subject of an Enforcement Bureau investigation.

58. The information before us indicates that MCT Corp. had revenues during each of the relevant years from 2002–2004 of [REDACTED]. Maritime had an obligation to disclose its attributable interests to the Commission in the first instance, without the Commission having to elicit the information from Maritime over the course of multiple requests spanning several years. The fact that many of the companies in which Donald DePriest was involved posted annual revenues [REDACTED] is of no significance in determining whether Maritime ignored the Commission's auction disclosure obligations. To the contrary, the evidence suggests that Maritime was not merely careless in ignoring its auction disclosure obligations; rather, we recognize that it had a clear financial incentive in the form of a substantial bidding credit for dissembling to the Commission with regard to the revenues of the entities in which Donald DePriest was involved. Such conduct, if proven at hearing, is patently inconsistent with the basic character qualifications of a Commission licensee. Accordingly, appropriate issues will be specified herein to determine whether Maritime misrepresented or lacked candor in its dealings with the Commission, either with an intent to deceive and/or in willful and repeated violation of § 1.17 of the Commission's rules.

4. Failure to Maintain Completeness and Accuracy of Pending Applications

59. As indicated above, under § 1.65 of the Commission's rules, an applicant is responsible for the continuing accuracy and completeness of the information furnished in a pending application or in Commission proceedings involving a pending application.[158] Whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant must, within 30 days, amend its application so as to furnish the additional or correct information. For the purposes of § 1.65 of the Commission's rules, an application is "pending" before the Commission from the time it is accepted for filing until a Commission grant (or denial) is no longer subject to reconsideration by the Commission or review by any court.[159]

60. In the instant case, Maritime's long-form application remains pending because it is the subject of ongoing administrative litigation. Thus, Maritime has been under a continuing obligation to ensure the continuing accuracy of its application and to amend its application accordingly with new information. The record before us indicates that Maritime only once amended its application, on August 21, 2006, to purportedly provide information about the affiliates of Donald DePriest. Although Maritime appears to have further refined the list of all such affiliates of Donald DePriest via subsequent disclosures, Maritime has failed to amend its pending application to reflect such additional information. Accordingly, an appropriate issue will be designated to determine whether Maritime willfully and/or repeatedly violated § 1.65 of the Commission's rules.

5. Termination of Authorizations

61. Pursuant to § 1.955(a) of the Commission's rules, an authorization will terminate automatically without affirmative Commission action for failure to construct or, if constructed, for failure to operate pursuant to the service-specific rules for that authorization.[160] In the instant case, one of the petitioners challenging Maritime alleges that Maritime's licenses for site-based AMTS stations have canceled automatically because stations either were never constructed by Maritime's predecessor-in-interest or because operation of the stations has been permanently discontinued.[161] Maritime generally denies these allegations.[162] We conclude that there is a disputed issue of material fact with respect to whether the licenses for any of Maritime's site-based AMTS stations have canceled automatically for lack of construction or permanent discontinuance of operation.[163] Accordingly, an appropriate issue will be designated to determine whether any of Maritime's site-based licenses were constructed or operated in violation of §§ 1.955(a) and 80.49(a) of the Commission's rules.[164]

IV. Ordering Clauses

62. Accordingly, *it is ordered that,* pursuant to sections 309(e), 312(a)(1), 312(a)(2), 312(a)(4), and 312(c) of the Act, 47 U.S.C. 309(e), 312(a)(1), 312(a)(2), 312(a)(4), and 312(c), Maritime Communications/Land Mobile, LLC, *shall show cause* why the authorizations for which it is the licensee set forth in Attachment A should not be revoked, and that the above-captioned applications filed by Maritime Communications/Land Mobile, LLC, are *designated for hearing,* in a consolidated proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues:

(a) To determine whether Maritime failed to disclose all real parties in interest and other ownership information in its applications to participate in Auction No. 61, in willful and/or repeated violation of § 1.2112 of the Commission's rules, and whether Donald DePriest was such a real party in interest.

(b) To determine whether Maritime failed to disclose all attribution information in its applications to

[156] *See* Maritime September 2006 Opposition.

[157] *See* Maritime Response to WTB.

[158] 47 CFR 1.65.

[159] *Id.*

[160] *See* 47 CFR 1.955(a) and 80.49(a) (providing the specific conditions and time periods governing the automatic cancellations of AMTS station licenses).

[161] *See, e.g., Maritime Communications/Land Mobile, LLC,* Petition to Deny Application FCC File No. 0004193328, at 57–60 (filed May 12, 2010).

[162] *See, e.g., Maritime Communications/Land Mobile, LLC,* Opposition to Petition to Deny Application FCC File No. 0004131898 (filed Apr. 7, 2010).

[163] We note that the Commission previously concluded that Maritime's authorization for a site-based station in Chicago had canceled due to permanent discontinuance of operation. *See Mobex Network Services, LLC,* Memorandum Opinion and Order, 25 FCC Rcd 3390, 3395 para. 10 (2010), *recon. pending.*

[164] If the Presiding Judge makes the fact-based determination that Maritime has constructed or operated any of its stations at variance with §§ 1.955(a) and 80.49(a) of the Commission's rules, those authorizations will be deemed to have cancelled automatically, and the Presiding Judge need not take any affirmative action revoking, deleting, or otherwise terminating such licenses.

participate in Auction No. 61, in willful and/or repeated violation of § 1.2110 of the Commission's rules.

(c) To determine whether Maritime falsely certified to its eligibility as a designated entity, in willful and/or repeated violation of § 1.2105 of the Commission's rules.

(d) To determine whether Maritime failed to amend its Auction No. 61 long-form application, in willful and/or repeated violation of § 1.65 of the Commission's rules.

(e) To determine whether Maritime engaged in misrepresentation and/or lack of candor in its applications relating to Auction No. 61 and/or in its responses to official Commission inquiries for information relating to its participation in Auction No. 61.

(f) To determine whether Maritime made incorrect written statements of fact to, and/or omitted material information from, the Commission, in connection with matters arising from its participation in Auction No. 61, and/or in its responses to official Commission inquiries for information relating to its participation in Auction No. 61, in willful and/or repeated violation of § 1.17 of the Commission's rules.

(g) To determine whether Maritime constructed or operated any of its stations at variance with §§ 1.955(a) and 80.49(a) of the Commission's rules.

(h) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Maritime is qualified to be and remain a Commission licensee.

(i) To determine, in light of the foregoing issues, whether the captioned authorizations for which Maritime is the licensee should be revoked.

(j) To determine, in light of the foregoing issues, whether the captioned applications filed by or on behalf of Maritime Communications/Land Mobile, LLC, should be granted.

63. *It is further ordered* that, irrespective of the resolution of the foregoing issues, it shall be determined whether an order should be issued against Maritime directing it and its principal(s) to repay in full to the United States Treasury the entire amount of the bidding credit that it was awarded in Auction No. 61, plus all accrued interest.

64. *It is further ordered* that, irrespective of the resolution of the foregoing issues, it shall be determined whether an order should be issued against Maritime prohibiting it and its principal(s) from participating in future Commission auctions.

65. *It is further ordered* that, irrespective of the resolution of the foregoing issues, it shall be determined, pursuant to section 503(b)(1) of the Act, 47 U.S.C. 503(b)(1), whether an *order of forfeiture* should be issued against Maritime in an amount not to exceed the statutory limit for the willful and/or repeated violation of each rule section above for which the statute of limitations in section 503(b)(6), 47 U.S.C. 503(b)(6), has not lapsed.[165]

66. *It is further ordered* that, in connection with the possible forfeiture liability noted above, this document constitutes notice of an opportunity for hearing, pursuant to section 503(b)(3)(A) of the Act, 47 U.S.C. 503(b)(3)(A), and § 1.80 of the Commission's rules, 47 CFR 1.80.

67. *It is further ordered* that, pursuant to section 312(c) of the Act and §§ 1.91(c) and 1.221 of the Commission's rules, 47 U.S.C. 312(c) and 47 CFR 1.91(c) and 1.221, to avail itself of the opportunity to be heard and to present evidence at a hearing in this proceeding, Maritime, in person or by an attorney, *shall file* with the Commission, within 20 calendar days of the release of this Order, a written appearance stating that it will appear at the hearing and present evidence on the issues specified above.

68. *It is further ordered* that, pursuant to § 1.91 of the Commission's rules, 47 CFR 1.91, if Maritime fails to file a timely appearance, its right to a hearing shall be deemed to be waived. In the event the right to a hearing is waived, the Chief Administrative Law Judge (or presiding officer if one has been designated) shall, at the earliest practicable date, issue an order reciting the events or circumstances constituting a waiver of hearing, terminating the hearing proceeding, and certifying the case to the Commission. In addition, pursuant to § 1.221 of the Commission's rules, 47 CFR 1.221, if any applicant to any of the captioned applications fails to file a timely written appearance, the captioned application shall be dismissed with prejudice for failure to prosecute.

69. *It is further ordered* that the Chief, Enforcement Bureau, shall be made a party to this proceeding without the need to file a written appearance.

70. *It is further ordered* that pursuant to section 312(d) of the Act, 47 U.S.C. 312(d) and § 1.91(d) of the Commission's rules, 47 CFR 1.91(d), the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Enforcement Bureau as to the issues at para. 62(a)–(i), above, and that, pursuant to section 309(e) of the Act, 47 U.S.C. 309(e), and § 1.254 of the Commission's rules, 47 CFR 1.254, the burden of proceeding with the introduction of evidence and the burden of proof shall be upon Maritime Communications/Land Mobile, LLC, as to the issue at para. 62(j), above.

71. *It is further ordered* that each of the following entities shall be made a party to this hearing in its capacity as an applicant in one or more of the captioned applications: EnCana Oil and Gas (USA), Inc.; Duquesne Light Company; DCP Midstream LP; Jackson County Rural Membership Electric Cooperative; Puget Sound Energy, Inc.; Enbridge Energy Company, Inc.; Interstate Power and Light Company; Wisconsin Power and Light Company; Dixie Electric Membership Corporation, Inc.; Atlas Pipeline—Mid Continent LLC; Denton County Electric Cooperative, Inc. dba CoServ Electric; and Southern California Regional Rail Authority.

72. *It is further ordered* that each of the following entities shall be made parties to this hearing in its capacity as a petitioner to one or more of the captioned applications: Environmental LLC; Intelligent Transportation and Monitoring Wireless LLC; Skybridge Spectrum Foundation; Telesaurus Holdings GB LLC; Verde Systems LLC; V2G LLC; and Warren Havens.

73. *It is further ordered* that copies of this document shall be sent via Certified Mail—Return Receipt Requested to the following:

Patricia J. Paoletta, Esq., Wiltshire & Grannis LLP, 1200 18th Street, NW., Suite 1200, Washington, DC 20036. Counsel for Maritime Communications/ Land Mobile, LLC.

EnCana Oil and Gas (USA), Inc., *Attn:* Dean Purcelli, 1400 North Dallas Parkway, Suite 1000, Dallas, TX 75240.

Duquesne Light Company, *Attn:* Lee Pillar, 2839 New Beaver Avenue, Pittsburgh, PA 15233.

DCP Midstream LP, *Attn:* Mark Standberry, 6175 Highland Avenue, Beaumont, TX 77705.

Jackson County Rural Membership Electric Cooperative, *Attn:* Brad Pritchett, 274 E. Base Road, Brownstown, IN 47220.

[165] Pursuant to § 20.9(b) of the Commission's rules, AMTS is presumed to be a commercial mobile radio service and will be treated as a common carriage service absent an interested party's satisfactory demonstration to the Commission that it be deemed otherwise. Therefore, for the purposes of any forfeiture that may be issued, Maritime shall be considered to be a common carrier. Pursuant to § 1.80(b)(2) of the Commission's rules, the maximum forfeiture shall not exceed $150,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1.5 million for a single act for failure to act.

Puget Sound Energy, Inc. *Attn:* Rudy Wolf, P.O. Box 97034, 10885 NE 4th Street, Bellevue, WA 98009–9734.

Enbridge Energy Company, Inc., *Attn:* Telecom, 1001 G Street, NW., Suite 500 West, Washington, DC 20001.

Kurt E. DeSoto, Esq., Wiley Rein LLP, 1776 K Street, NW., Washington, DC 20006. Counsel for Interstate Power and Light Company.

Kurt E. DeSoto, Esq., Wiley Rein LLP, 1776 K Street, NW., Washington, DC 20006. Counsel for Wisconsin Power and Light Company.

Dixie Electric Membership Corporation, Inc., *Attn:* John D. Vranic, 16262 Wax Road, Greenwell Springs, LA 70739.

Atlas Pipeline—Mid Continent LLC, *Attn:* James Stepp, 110 W 7th Street, Suite 2300, Tulsa, OK 74119.

Mona Lee & Associates, *Attn:* Mona Lee, 3730 Kirby Drive, Suite 1200, PMB 165, Houston, TX 77098. Contact for Atlas Pipeline—Mid Continent LLC.

Denton County Electric Cooperative, Inc. dba CoServ Electric, *Attn:* Chris Anderson, Project Mgr.—IS, 7701 S. Stemmons, Corinth, TX 76210–1842.

Fletcher Heald & Hildreth, PLC, *Attn:* Paul J. Feldman, 1300 N. 17th Street, 11th Fl., Arlington, VA 22209. Counsel for Southern California Regional Rail Authority.

Gardere Wynne Sewell LLP, Robert J Miller, 1601 Elm Street, Suite 2800, Dallas, TX 75201. Counsel for Denton County Electric Cooperative, Inc. dba CoServ Electric .

Environmentel, LLC, 2509 Stuart Street, Berkeley, CA 94705.

Intelligent Transportation and Monitoring Wireless LLC, 2509 Stuart Street, Berkeley, CA 94705.

Skybridge Spectrum Foundation, 2509 Stuart Street, Berkeley, CA 94705.

Southern California Regional Rail Authority, *Attn:* Darrel Maxey, 700 S. Flower Street, Suite 2600, Los Angeles, CA 90017.

Telesaurus Holdings GB LLC, 2509 Stuart Street, Berkeley, CA 94705.

Verde Systems LLC, 2509 Stuart Street, Berkeley, CA 94705.

V2G LLC, 2509 Stuart Street, Berkeley, CA 94705.

Warren Havens, 2509 Stuart Street, Berkeley, CA 94705.

74. *It is further ordered* that a copy of this document, or a summary thereof, shall be published in the **Federal Register.**

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

ATTACHMENT A

The following authorizations of which Maritime Communications/Land Mobile, LLC is the licensee are the subject of this license revocation hearing:

1. WQGF315
2. WQGF316
3. WQGF317
4. WQGF318
5. KA98265
6. KAE889
7. KCE278
8. KPB531
9. KUF732
10. WFN
11. WHG693
12. WHG701
13. WHG702
14. WHG703
15. WHG705
16. WHG706
17. WHG707
18. WHG708
19. WHG709
20. WHG710
21. WHG711
22. WHG712
23. WHG713
24. WHG714
25. WHG715
26. WHG716
27. WHG717
28. WHG718
29. WHG719
30. WHG720
31. WHG721
32. WHG722
33. WHG723
34. WHG724
35. WHG725
36. WHG726
37. WHG727
38. WHG728
39. WHG729
40. WHG730
41. WHG731
42. WHG732
43. WHG733
44. WHG734
45. WHG735
46. WHG736
47. WHG737
48. WHG738
49. WHG739
50. WHG740
51. WHG741
52. WHG742
53. WHG743
54. WHG744
55. WHG745
56. WHG746
57. WHG747
58. WHG748
59. WHG749
60. WHG750
61. WHG751
62. WHG752
63. WHG753
64. WHG754
65. WHV733
66. WHV740
67. WHV843
68. WHW848
69. WHX877
70. WRD580
71. WRV374

ATTACHMENT B

The following pending applications are designated for hearing in this proceeding:

1. Maritime Communications/Land Mobile, LLC, and EnCana Oil and Gas (USA), Inc., Application for Assignment of Authorization, File No. 0004030479.

2. Maritime Communications/Land Mobile, LLC, and Southern California Regional Rail Authority, Application for Assignment of Authorization, File No. 0004144435.

3. Maritime Communications/Land Mobile LLC, Application for Modification of Facilities, File No. 0004193028.

4. Maritime Communications/Land Mobile LLC, and Duquesne Light Company, Application for Assignment of Authorization, File No. 0004193328.

5. Maritime Communications/Land Mobile, LLC, and DCP Midstream LP, Application for Assignment of Authorization, File No. 0004354053.

6. Maritime Communications/Land Mobile LLC, Application for Modification of Facilities, File No. 0004309872.

7. Maritime Communications/Land Mobile, LLC, and Jackson County Rural Membership Electric Cooperative, Application for Assignment of Authorization, File No. 0004310060.

8. Maritime Communications/Land Mobile LLC, Application for Modification of Facilities, File No. 0004314903.

9. Maritime Communications/Land Mobile, LLC, and Puget Sound Energy, Inc., Application for Assignment of Authorization, File No. 0004315013.

10. Maritime Communications/Land Mobile, LLC, and Enbridge Energy Company, Inc., Application for Assignment of Authorization, File No. 0004430505.

11. Maritime Communications/Land Mobile, LLC, and Interstate Power and Light Company, Application for Assignment of Authorization, File No. 0004417199.

12. Maritime Communications/Land Mobile, LLC, and Wisconsin Power and Light Company, Application for Assignment of Authorization, File No. 0004419431.

13. Maritime Communications/Land Mobile, LLC, and Wisconsin Power and Light Company, Application for Assignment of Authorization, File No. 0004422320.

14. Maritime Communications/Land Mobile, LLC, and Wisconsin Power and Light Company, Application for Assignment of Authorization, File No. 0004422329.

15. Maritime Communications/Land Mobile, LLC, and Dixie Electric Membership Corporation, Inc., Application for Assignment of Authorization, File No. 0004507921.

16. Maritime Communications/Land Mobile, LLC, Application for Modification of Facilities, File No. 0004153701.

17. Maritime Communications/Land Mobile, LLC, and Atlas Pipeline—Mid Continent LLC, Application for Assignment of Authorization, File No. 0004526264.

18. Maritime Communications/Land Mobile, LLC, and Denton County Electric Cooperative, Inc. dba CoServ Electric, Application for Assignment of Authorization, File No. 0004636537.

19. Maritime Communications/Land Mobile, LLC, and EnCana Oil and Gas (USA), Inc., Application for Assignment of Authorization, File No. 0004604962.

[FR Doc. 2011–12792 Filed 5–23–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 11–882]

Emergency Access Advisory Committee; Announcement of Date of Next Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the date of the Emergency Access Advisory Committee's (Committee or EAAC) next meeting. The meeting of the EAAC will consider the written report on the EAAC national survey of persons with disabilities and will engage in a discussion of future features and technologies involved with Next Generation 911 (NG9–1–1) emergency services for individuals with disabilities.

DATES: The Committee's next meeting will take place on Friday, June 10, 2011, 10:30 a.m. to 4:30 p.m. (E.S.T.), at the headquarters of the Federal Communications Commission (FCC).

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Commission Meeting Room, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Cheryl King, Consumer and Governmental Affairs Bureau, 202–418–2284 (voice) or 202–418–0416 (TTY), *e-mail: Cheryl.King@fcc.gov* and/or Patrick Donovan, Public Safety and Homeland Security Bureau, 202–418–2413, *e-mail: Patrick.Donovan@fcc.gov.*

SUPPLEMENTARY INFORMATION: On December 7, 2010, in document DA 10–2318, Chairman Julius Genachowski announced the establishment, and appointment of members and Co-Chairpersons, of the EAAC, an advisory committee required by the Twenty-first Century Communications and Video Accessibility Act of 2010, Public Law 111–260 (CVAA), which directs that an advisory committee be established, for the purpose of achieving equal access to emergency services by individuals with disabilities as part of our nation's migration to a national Internet protocol-enabled emergency network, also known as the NG9–1–1 system.

The purpose of the EAAC is to determine the most effective and efficient technologies and methods by which to enable access to NG9–1–1 emergency services by individuals with disabilities. In order to fulfill this mission, the CVAA directs that within one year after the EAAC's members are appointed, the Committee shall conduct a national survey, with the input of groups represented by the Committee's membership, after which the Committee shall develop and submit to the Commission recommendations to implement such technologies and methods. The meeting of the EAAC on June 10, 2011 will consider the written report on the EAAC national survey of persons with disabilities and will engage in a discussion of future features and technologies involved with NG9–1–1 emergency services for individuals with disabilities.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. *Send an e-mail to: fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2011–12801 Filed 5–23–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, May 26, 2011 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of the Minutes for the Meeting of May 5, 2011.
Policy regarding Disclosure of Documents and Information in the Enforcement Process.
Draft Advisory Opinion 2011–06: Democracy Engine, LLC; Democracy Engine, Inc., PAC; Mr. Jonathan Zucker; and Mr. Erik Pennebaker.
Draft Advisory Opinion 2011–07: Fleischmann for Congress.
Proposed Final Audit Report on the Kansas Republican Party (A08–02).
Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Commission Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2011–12796 Filed 5–20–11; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 8, 2011.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Elgin Bancshares, Inc.,* Elgin, Illinois; to continue to engage in

extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, May 19, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–12712 Filed 5–23–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation; Medicare Program; Meeting of the Technical Advisory Panel on Medicare Trustee Reports

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces public meetings of the Technical Advisory Panel on Medicare Trustee Reports (Panel). Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Panel will discuss the short-term (10 year) projection methods and assumptions in projecting Medicare health spending for Parts A, B, C and D and may make recommendations to the Medicare Trustees on how the Trustees might more accurately estimate health spending in the short run. The Panel's discussion is expected to be very technical in nature and will focus on the actuarial and economic assumptions and methods by which Trustees might more accurately measure health spending. Although panelists are not limited in the topics they may discuss, the Panel is not expected to discuss or recommend changes in current or future Medicare provider payment rates or coverage policy.

DATES: June 9, 2011, 9 a.m. to 5 p.m. and June 10, 2011, 8:30 a.m. to 1 p.m. e.t.

ADDRESSES: The meetings will be held at HHS headquarters at 200 Independence Ave., SW., Washington, DC 20201, Room 738G.

Comments: The meeting will allocate time on the agenda to hear public comments at the end of the meeting. In lieu of oral comments, formal written comments may be submitted for the record to Donald T. Oellerich, OASPE, 200 Independence Ave., SW., 20201, Room 405F. Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Donald T. Oellerich (202) 690–8410, *Don.oellerich@hhs.gov. Note:* Although the meeting is open to the public, procedures governing security procedures and the entrance to Federal buildings may change without notice. Those wishing to attend the meeting must call or e-mail Dr. Oellerich by Monday June 6, 2011, so that their name may be put on a list of expected attendees and forwarded to the security officers at HHS Headquarters.

SUPPLEMENTARY INFORMATION:

Topics of the Meeting: The Panel is specifically charged with discussing and possibly making recommendations to the Medicare Trustees on how the Trustees might more accurately estimate health spending in the United States. The discussion is expected to focus on highly technical aspects of estimation involving economics and actuarial science. Panelists are not restricted, however, in the topics that they choose to discuss.

Procedure and Agenda: This meeting is open to the public. The Panel will likely hear presentations by panel members and HHS staff regarding short range projection methods and assumptions. After any presentations, the Panel will deliberate openly on the topic. Interested persons may observe the deliberations, but the Panel will not hear public comments during this time. The Panel will also allow an open public session for any attendee to address issues specific to the topic.

Authority: 42 U.S.C. 217a; Section 222 of the Public Health Services Act, as amended. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: May 9, 2011.

Sherry Glied,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2011–12684 Filed 5–23–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Health IT Tool Evaluation." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on March 11, 2011 and allowed 60 days for public comment. One comment was received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by June 23, 2011.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (*attention:* AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (*attention:* AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

Health IT Tool Evaluation

The Agency for Healthcare Research and Quality (AHRQ) is a lead Federal agency in developing and disseminating evidence and evidence-based tools on how health IT can improve health care quality, safety, efficiency, and effectiveness.

In support of the health IT initiative, AHRQ developed the National Resource Center (NRC) for Health IT Web site. This site contains a range of information and evidence-based tools that support the health IT initiative's work and aims.

With this project AHRQ is conducting an evaluation to assess whether these tools are reaching their intended audiences, are easy to use, and provide the information that users expect and need. The current project is an evaluation of one of the tools available on the NRC site: The Health IT Survey Compendium. The Health IT Survey Compendium is a searchable resource that contains a set of publicly available surveys to assist organizations in evaluating health IT. The surveys in the Health IT Survey Compendium cover a

broad spectrum, including user satisfaction, usability, technology use, product functionality, and the impact of health IT on safety, quality, and efficiency.

The audiences included in this evaluation are health IT researchers (ranging in experience and expertise from research assistants to more senior investigators such as university professors) and health IT implementers (e.g., clinical champions and IT staff at provider organizations, IT implementation consultants and experts). In the course of conducting this evaluation, AHRQ will evaluate both users and non-users (defined as not current but possible users) of the Health IT Survey Compendium.

The goals of this project are to determine whether the Health IT Survey Compendium is reaching its intended audiences, whether it is meeting the information needs and expectations of these audiences, and whether it is easy to use.

This study is being conducted by AHRQ through its contractors, Westat and Mosaica Partners, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to health care technologies. 42 U.S.C. 299a(a)(5).

Method of Collection

To achieve the projects' goals AHRQ will conduct the following activities:

(1) Screening questionnaire—used to recruit research participants for the needs assessment interviews, usability testing and discussion groups, which are described below. The questionnaire also has a demographics section to collect some basic demographic information for those persons that "screen-in."

(2) Needs assessment interviews—consisting of semi-structured interviews with non-users of the Health IT Survey Compendium. The purpose of these interviews is to discover and then assess the relative importance of information needs of the intended audiences of the Compendium. These interviews will provide the perspective of non-users of the Compendium in order to elicit unbiased feedback about information needs. After thoroughly exploring information needs, each interviewee will be shown the Health IT Survey Compendium and asked to provide feedback about how it addresses their needs for surveys and data collection instruments.

(3) Usability testing—focusing on the navigation, ease of use, and usefulness of the Health IT Survey Compendium. These interviews will include both current users and non-users of the Health IT Survey Compendium.

(4) Discussion groups—consisting of eight groups of 6–8 participants each (a maximum of 64 participants across all eight groups). The majority of the session time will be spent showing the Health IT Survey Compendium to the participants, and the moderator will elicit reactions to and opinions about the Health IT Survey Compendium, its features, and the surveys offered.

The outcome of the evaluation will be a report including recommendations for enhancing and improving the Health IT Survey Compendium. The report will provide results about both the perceived usefulness and the usability of the Health IT Survey Compendium. Results will be presented for individual audience segments as well as for the user population as a whole. The report will also include specific suggestions on how to revise and extend the Health IT Survey Compendium to make it more useful to health IT researchers and implementers, and will discuss the general implications of the Health IT Survey Compendium evaluation for the development and evaluation of other tools available on the NRC Web site.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annual burden hours for each respondent's time to participate in this evaluation. The screening questionnaire will be completed by as many as 120 persons and will take 3 minutes to complete on average (only those persons that "screen-in" will complete the demographics section). The needs assessment will be completed by 18 persons and requires one hour. Usability testing will involve 18 persons and is estimated to take one and a half hours. Eight discussion groups with no more than 8 persons each will be held and will last for about 90 minutes. The total annual burden is estimated to be 147 hours.

Exhibit 2 shows the estimated annual cost burden associated with the respondent time to participate in this evaluation. The total annual burden is estimated to be $7,454.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Interview type	Maximum number of respondents	Number of responses per respondent	Max. hours per response	Total burden hours
Screening Questionnaire	120	1	3/60	6
Needs Assessment	18	1	1.0	18
Usability Testing	18	1	1.5	27
Discussion Groups	64	1	1.5	96
Total	120	na	na	147

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Interview type	Maximum number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Screening Questionnaire	120	6	$50.71	$304
Needs Assessment	18	18	50.71	913
Usability Testing	18	27	50.71	1,369
Discussion Groups	64	96	50.71	4,868

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN—Continued

Interview type	Maximum number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Total	120	147	NA	7,454

*The hourly wage for the participants across the four data collections (screening questionnaire, needs assessment interview, usability testing interviews, and discussion group interviews) is based upon the mean of the average hourly wages for Social science research assistants (19–4061; $19.39 per hour); Postsecondary Health Specialties Teachers (25–1071; $53.88 per hour);Management analysts (13–1111; $40.70 per hour); Computer and Information Systems Managers (11–3021; $58.00 per hour); Family and General Practitioners Teachers (29–1060; $81.03 per hour);Pharmacists (29–1051; $51.27 per hour). May 2009 National Occupational Employment and Wage Estimates, United States, U.S. Bureau of Labor Statistics Division of Occupational Employment Statistics *http://www.bls.gov/oes/current/oes_nat.htm#29–0000.*

Estimated Annual Costs to the Federal Government

The estimated total cost to the Federal Government for this project is $411,641.00 over a two-year period from September 8, 2010 to September 7, 2012. The estimated average annual cost is $205,821.

Exhibit 3 provides a breakdown of the estimated total and average annual costs by category.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUAL COST* TO THE FEDERAL GOVERNMENT

Cost component	Total cost	Annualized cost
Project Management and Coordination Activities	$58,140	$29,070
Evaluation Plan and Protocol Development	44,908	22,454
OMB Submission Package	12,362	6,181
Conduct Evaluation**	159,991	79,996
Data Analysis, Report and Briefing	118,081	59,041
Documentation and 508 Compliance	18,159	9,080
Total	411,641	205,821

*Costs are fully loaded including overhead, G&A and fees.
**These activities include the data collections described in this submission.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: May 10, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–12506 Filed 5–23–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Pilot Test of the Proposed Pharmacy Survey on Patient Safety Culture." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on March 11th, 2011 and allowed 60 days for public comment. One comment was received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by June 23, 2011.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (*attention:* AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (*attention:* AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

Pilot Test of the Proposed Pharmacy Survey on Patient Safety Culture

As the baby boomer population ages, the general U.S. population continues to grow, and as drug therapies for the treatment of chronic diseases become more efficacious, the expected increase

in the number of prescriptions and demand for pharmaceutical products is likely to increase the potential for medication errors in community/retail pharmacies. In 2007, there were about 56,000 community/retail pharmacies, including about 22,000 traditional chain pharmacy companies, nearly 17,000 independent drug stores, about 9,300 supermarket pharmacies, and about 7,700 mass merchant pharmacies. Numerous reports substantiate the presence of medication errors in pharmacies. For example, one national observational study of prescription dispensing accuracy and safety in 50 pharmacies in the U.S. found a rate of about 4 errors per day in a pharmacy filling 250 prescriptions daily. This error rate translates to an estimated 51.5 million errors occurring during the filling of 3 billion prescriptions each year.

Given the widespread impact of pharmacies on patient safety, the new Pharmacy Survey on Patient Safety Culture (Pharmacy SOPS) will measure pharmacy staff perceptions about what is important in their organization and what attitudes and behaviors related to patient safety are supported, rewarded, and expected. The survey will help community/retail pharmacies to identify and discuss strengths and weaknesses of patient safety culture within their individual pharmacies. They can then use that knowledge to develop appropriate action plans to improve their practices and their culture of patient safety. This survey is designed for use in community/retail pharmacies, which includes chain drugstores (*e.g.,* Walgreens and CVS), supermarket pharmacies, independently owned pharmacies, and mass merchant pharmacies (*e.g.,* Wal-Mart, Costco, Target), not for use in hospital pharmacies.

This research has the following goals:

(1) Cognitively test and modify as necessary the Pharmacy Survey on Patient Safety Culture Questionnaire;

(2) Pretest and modify the questionnaire as necessary;

(3) Make the final questionnaire available to the public.

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this study the following activities and data collections will be implemented:

(1) Cognitive interviews—Two rounds of interviews will be conducted by telephone with 10 respondents each. The purpose of these interviews is to refine the questionnaire's items and composites. Each round will be conducted with a mix of pharmacists and non-pharmacist staff working in community/retail pharmacies throughout the U.S. The same interview guide will be used for each round.

(2) Pretest—The draft questionnaire will be pretested with all pharmacy staff in approximately 60 community/retail pharmacies. The purpose of the pretest is to collect data for an assessment of the reliability and construct validity of the survey's items and composites, allowing for their further refinement.

(3) Pharmacy background questionnaire—This questionnaire will be completed by the pharmacy manager in each of the 60 pretest sites to provide background characteristics of the pharmacy, such as pharmacy type (independently owned or chain), type of chain (traditional drugstore, supermarkets, mass merchant), average number of prescriptions filled weekly, average number of hours the pharmacy is open on weekdays, etc.

(4) Dissemination activities—The final questionnaire will be made available to the public through the AHRQ website. This activity does not impose a burden on the public and is therefore not included in the burden estimates in Exhibit 1.

The information collected will be used to test and improve the draft survey items in the Pharmacy Survey on Patient Safety Culture Questionnaire. Psychometric analysis will be conducted on the pilot data to examine item nonresponse, item response variability, factor structure, reliability, and construct validity of the items included in the survey. Because the survey items are being developed to measure specific aspects of patient safety culture in the pharmacy setting, the factor structure of the survey items will be evaluated through multilevel confirmatory factor analysis. On the basis of the data analyses, items or factors may be dropped.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the pharmacies' time to participate in this research. Cognitive interviews will be conducted with staff at 20 pharmacies (approximately 10 pharmacists and 10 nonpharmacist staff) and will take about one hour and 30 minutes to complete. 627 staff from 60 pharmacies will participate in the pretest (an average of 10.45 staff from each pharmacy). The pretest questionnaire (the Pharmacy Survey on Patient Safety Culture) requires 15 minutes to complete. The pharmacy background questionnaire will be completed by the manager at each of the 60 pharmacies participating in the pretest and takes 10 minutes to complete. The total annualized burden is estimated to be 197 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the pharmacies' time to participate in this research. The total cost burden is estimated to be $4,948 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form Name/activity	Number of pharmacies	Number of responses per pharmacy	Hours per response	Total burden hours
Cognitive interviews	20	1	1.5	30
Pretest	60	10.45	15/60	157
Pharmacy background questionnaire	60	1	10/60	10
Total	140	na	na	197

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form Name/activity	Number of pharmacies	Total burden hours	Average hourly wage rate *	Total cost burden
Cognitive interviews	20	30	$32.28	$968
Pretest	60	157	22.08	3,467
Pharmacy background questionnaire	60	10	51.27	513
Total	140	197	na	$4,948

* Based upon the mean of the average hourly wages for Pharmacists (29–1051; $51.27), Pharmacy Technicians (29–2052; $13.92), and Pharmacy Aides (31–9095; $10.74), National Compensation Survey: Occupational wages in the United States May 2009, "U.S. Department of Labor, Bureau of Labor Statistics." The hourly wage for the cognitive interviews is a weighted average for 10 pharmacists, 8 pharmacy technicians and 2 pharmacy aides; the hourly wage for the pretest is a weighted average for 157 pharmacists, 235 pharmacy technicians and 235 pharmacy aides.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost for this project. Although data collection will last for less than one year, the entire project will take about 3 years. The total cost for this project is approximately $320,818.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$65,340	$21,780
Data Collection Activities	62,831	20,944
Data Processing and Analysis	11,004	3,368
Publication of Results	15,767	5,256
Project Management	7,496	2,498
Overhead	158,380	5,293
Total	320,818	106,939

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: 0(a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: May 10, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–12505 Filed 5–23–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Interagency Committee on Smoking and Health, Department of Health and Human Services, has been renewed for a 2-year period through March 20, 2013.

For information, contact Dana Shelton, Designated Federal Officer, Interagency Committee on Smoking and Health, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road, M/S K–50, Atlanta, Georgia 30333, telephone 770/488–5709 or fax 770/488–5767.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 11, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–12568 Filed 5–23–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated

October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 76, FR 24886–24887, dated May 3, 2011) is amended to reflect the reorganization of the National Center for Injury Prevention and Control, Office of Noncommunicable Diseases, Injury and Environmental Health, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

After the title and functional statement for the Division of Violence Prevention (CUHC), delete in their entirety the title and functional statement for the Office of the Director, (CUHC1) and insert the following:

Office of the Director, (CUHC1). (1) Establishes and interprets policies and determines program priorities; (2) provides national and international leadership and guidance in policy formation and program planning, development, and evaluation; (3) provides administrative, fiscal, and technical support for division programs and units; (4) assures multi-disciplinary collaboration in violence prevention and control activities; (5) provides leadership for developing research in etiologic, epidemiologic, and behavioral aspects of violence prevention and control; (6) coordinates domestic and international activities within the division and with others involved in violence prevention; (7) prepares and monitors clearance of manuscripts for publication in scientific and technical journals and publications, including articles and guidelines published in the MMWR, and other publications for the public; (8) prepares, tracks and coordinates responses to all inquiries from Congress, the public, and the Department of Health and Human Services; (9) develops and produces communication tools and public affairs strategies to meet the needs of the division programs and mission; (10) develops health communication campaigns and guides the production and distribution of print, broadcast, and electronic materials for use in programs at the national and state levels; (11) provides technical assistance and consultation to domestic and international governmental and non-governmental organizations on violence prevention; and (12) establishes linkages and collaborates, as appropriate, with other divisions and offices in NCIPC, other CIOs throughout CDC, and with national and international prevention partners that impact on violence prevention programs.

Delete in their entirety items 10 through 13 of the functional statement for the Program Implementation and Dissemination Branch (CUHCD).

Dated: May 13 2011.

William P. Nichols,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–12570 Filed 5–23–11; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1999–D–0792] (Formerly FDA–1999–D–0792)

Draft Guidance for Clinical Investigators, Industry, and FDA Staff: Financial Disclosure by Clinical Investigators; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Guidance for Clinical Investigators, Industry, and FDA Staff: Financial Disclosure by Clinical Investigators." This draft guidance is intended to assist clinical investigators, industry, and FDA staff in interpreting and complying with the regulations governing financial disclosure by clinical investigators. This guidance provides FDA's responses to the most frequently asked questions regarding financial disclosure by clinical investigators.

DATES: Although comments on any guidance can be submitted at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers a comment on this draft guidance before it begins work on the final version of the guidance, electronic or written comments on the draft guidance should be submitted by July 25, 2011. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov.* See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

ADDRESSES: Submit written requests for single copies of this draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002 (1–888–463–6332 or 301–796–3400); or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448 (1–800–835–4709 or 301–827–1800); or the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4622, Silver Spring, MD 20993 (1–800–638–2041 or 301–796–7100). Send one self-addressed adhesive label to assist the office in processing your requests.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Marsha Melvin, Office of Good Clinical Practice, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5170, Silver Spring, MD 20993–0002, 301–796–8345.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled "Guidance for Clinical Investigators, Industry, and FDA Staff: Financial Disclosure by Clinical Investigators." This guidance is intended to assist clinical investigators, industry, and FDA staff in interpreting and complying with the regulations governing financial disclosure by clinical investigators, part 54 (21 CFR part 54), and to provide FDA's responses to the most frequently asked questions regarding financial disclosure by clinical investigators. When finalized, this guidance will supersede "Guidance for Industry—Financial Disclosure by Clinical Investigators" (March 20, 2001, Center for Drug Evaluation and Research, Center for Biologics Evaluation and Research, and Center for Devices and Radiological Health).

This guidance also responds to recommendations made by the Office of the Inspector General (OIG), Department of Health and Human Services, in their report entitled "The Food and Drug Administration's Oversight of Clinical Investigators' Financial Information." [1] The OIG's recommendations were intended to strengthen FDA's oversight

[1] OIG report OEI–05–07–00730 available at *http://oig.hhs.gov/oei/reports/oei-05-07-00730.pdf.* (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

and review of clinical investigators' financial disclosures. Specifically, the draft guidance will describe: (1) The sponsor's responsibility to collect the financial disclosure information prior to an investigator participating in a study and ensure that all required forms and attachments are submitted in marketing applications; (2) what is meant by "due diligence" in obtaining financial disclosures from investigators; and (3) how FDA will review financial disclosure information. The guidance will also seek comment on the circumstances under which FDA should consider public release of financial disclosure information related to an approved marketing application.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 54 and 21 CFR parts 312 and 812 have been approved under OMB control number 0910–0396; OMB control number 0910–0014; and OMB control number 0910–0078.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this draft guidance document. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov* or *http://www.fda.gov/ScienceResearch/SpecialTopics/RunningClinicalTrials/ProposedRegulationsandDraftGuidances/default.htm*.

Dated: May 16, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–12623 Filed 5–23–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2001–D–0066] (Formerly Docket No. 2001D–0107)

Expedited Review for New Animal Drug Applications for Human Pathogen Reduction Claims; Withdrawal of Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of a guidance that was issued on March 9, 2001.

DATES: May 24, 2011.

FOR FURTHER INFORMATION CONTACT: Steven Vaughn, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 240–276–8300.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 9, 2001 (66 FR 14155), FDA announced the availability of a guidance for industry #121 entitled "Expedited Review for New Animal Drug Applications for Human Pathogen Reduction Claims."

The guidance predates the enactment of the Animal Drug User Fee Act (ADUFA) of 2003, which was reauthorized by Congress in 2008. ADUFA authorized FDA to collect fees for certain animal drug applications and for the establishments, products, and sponsors associated with these and previously approved animal drug applications, in support of the review of animal drug products. As a result of these increased resources, the efficiencies of our current administrative processes, including the phased review and end review amendment processes, we have significantly reduced our review timeframes and afford sponsors a more efficient pathway to regulatory approval.

At the time the guidance was issued, FDA's review timeframes for new animal drug applications were considerably longer. As noted previously, significant changes have occurred in the Agency's processes and timeframes for reviewing new animal drug applications and the process for expedited review status contained in this guidance is outdated and no longer needed to assure the efficient review of these new animal drug applications.

Dated: *May 4, 2011.*

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–12624 Filed 5–23–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Dermatologic and Ophthalmic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 17, 2011, from 8 a.m. to 4:30 p.m.

Location: The Marriott Inn and Conference Center, University of Maryland University College (UMUC), 3501 University Blvd. East, Adelphi, MD. The conference center telephone number is 301–985–7300.

Contact Person: Yvette Waples, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, *Fax:* 301–847–8533, *e-mail: DODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about

possible modifications before coming to the meeting.

Agenda: On June 17, 2011, the committee will discuss biologics license application (BLA) 125387, aflibercept ophthalmic solution, proposed trade name EYLEA, sponsored by Regeneron Pharmaceuticals, Inc., indicated for the treatment of neovascular age-related macular degeneration (wet AMD).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. *Background material is available at: http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 3, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 25, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 26, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Yvette Waples at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. *Please visit our Web site at: http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 18, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–12741 Filed 5–23–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed collection; comment request; Web-Based Skills Training for SBIRT (Screening Brief Intervention and Referral to Treatment)

SUMMARY: 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 National Institute on Drug Abuse, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Web-based Skills Training for SBIRT (Screening Brief Intervention and Referral to Treatment).

Type of Information Collection Request: New.

Need and Use of Information Collection: The project aims to increase the provision of screening, brief intervention, and referral to treatment (SBIRT) for substance use in primary care by developing an engaging, interactive case-based training program that will be delivered over the Internet, providing convenient access to screening and brief intervention skills training and resources for busy PCPs. The goal of this study is to evaluate the effectiveness of this training on provider behavior and/or patient outcome and the program's utility as a training tool in a real-world medical setting. The training is named SBIRT–PC. Study participants will be randomly assigned to complete SBIRT–PC or a control training, consisting of online reading materials. Effectiveness will be evaluated in terms of differential SBIRT-related knowledge, attitudes, self-efficacy, self-reported clinical practices, skills as measured by virtual standardized patient evaluations (VSPE) and a telephone-based standardized patient (SP) interaction. Participants in each condition will also complete a training satisfaction questionnaire.

Frequency of Response: On occasion.

Affected Public: Private Sector; Businesses or other for-profit.

Type of Respondents: Primary Care Providers.

The annual reporting burden is as follows:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per set of responses	Estimated total annual burden hours requested
Primary Care Providers	94	1	2.0	188

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Quandra Scudder, Project Officer, National Institute on Drug Abuse NIDA, NIH, 6001 Executive Boulevard, Bethesda, MD 20892–9557, or call non-toll-free number (301) 594–0394 or E-mail your request, including your address to *scudderq@nida.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: May 18, 2011.

Mary Affeldt,

Executive Officer, (OM Director) NIDA.

[FR Doc. 2011–12726 Filed 5–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB review; Comment Request; Process Evaluation of the NIH Roadmap Epigenomics Program

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** in Vol. 76, No. 49, pages 13648–13649 on March 14, 2011, and allowed 60 days for public comment. No public comments were received on the planned study or any of the specific topics outlined in the 60-day notice. The purpose of this notice is to allow an additional 30 days for public comment. 5 CFR 1320.5 (General requirements) *Reporting and Recordkeeping Requirements:* Final Rule requires that the agency inform the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Proposed Collection

Title: Process Evaluation of the NIH Roadmap Epigenomics Program.

Type of Information Collection Request: New.

Need and Use of Information Collection: The proposed information collection is essential to the process evaluation of the NIH Roadmap Epigenomics Program. The process evaluation is a requirement of each of the relevant RFAs funded under the NIH Roadmap Epigenomics Program which require participating in evaluation research activities.

This evaluation study, a mixed-methods study which uses secondary source documentation and information from tracking and monitoring systems along with primary data to assess program process and progress, is non-experimental. The assessment is based on secondary source information, with primary source information collection added to augment the reliability and internal validity. The primary data collection uses information categories that genuinely tap added distinctions and opinions that relate to it to build the weight of evidence from first-hand sources that substantiate the initial hypotheses about the program phenomenon and its differences from a typical research portfolio of individual and insular projects.

The synthesized results across primary and secondary data sources will provide critical insights on transformativeness of high-impact, trans-NIH programs and contribute important information about the synergies and collaborations in multi-component scientific research. It will also identify areas for program improvement and lessons learned that might be useful to other research programs of the Agency.

To reduce response bias and to make the survey as accessible as possible to busy principal investigators, the survey will be web-based.

Frequency of Response: Once.

Affected Public: Principal Investigators of the program at not-for-profit institutions.

Type of Respondents: Principle Investigators.

The annual reporting burden is as follows:

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent: 1.

Average Burden Hours per Response: .33.

Estimated Total Annual Burden Hours Requested: 17.49.

The annualized cost to respondents is estimated at: $891.99.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden hours per response	Annual burden hours requested	Avg. hourly wage rate	Total annual respondent cost
Principal Investigators ..	53	1	1	[1]33	17.49	51	891.99

[1] 20 minutes.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, *should be directed to the:* Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, *Attention:* Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Genevieve deAlmeida-Morris, PhD, M.P.H., Project Officer, Office of Science Policy and

Communications, NIH/NIDA, NSC—Neuroscience Center, 5229, 6001 Executive Blvd., Rockville, MD, 20852, or call non-toll-free number 301–594–6802 or *e-mail your request including your address to: dealmeig@nida.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: May 18, 2011.

Mary Affeldt,

Executive Officer, (OM Director, NIDA).

[FR Doc. 2011–12722 Filed 5–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders Notice of 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: Communication Disorders Review Committee.

Date: June 15–16, 2011.

Time: June 15, 2011, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: June 16, 2011, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Susan Sullivan, PhD, Scientific Review Branch Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Suite 400C, Bethesda, MD 20892, 301–496–8683, *sullivas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12740 Filed 5–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, R03–VSL.

Date: June 1, 2011.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, PhD, Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, R03-Chemical Senses.

Date: June 2, 2011.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Susan L. Sullivan, PhD, Scientific Review Officer, National Institute of Deafness and Other, Communication Disorders, 6120 Executive Blvd Ste., 400C, Rockville, MD 20852, 301–496–8683, *sullivas@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, R03–Hearing and Balance.

Date: June 3, 2011.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sheo Singh, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12739 Filed 5–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Xenobiotic and Nutrient Disposition and Action Study Section, June 8, 2011, 8 a.m. to June 8, 2011, 6 p.m., Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA, 94102 which was published in the **Federal Register** on April 29, 2011, 76 FR 24036–24038.

The meeting will be held at The Westin St. Francis Hotel, 335 Powell Street, San Francisco, CA 94102. The meeting date and time remain the same. The meeting is closed to the public.

Dated: May 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12737 Filed 5–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 23, 2011, 8:30 a.m. to June 24, 2011, 5 p.m., West Chicago Lakeshore, 644 North Lake Shore Drive, Chicago, IL, 60611 which was published in the **Federal Register** on May 12, 2011, 76 FR 27652–27653.

The meeting will be one day only June 24, 2011, from 8 a.m. to 5 p.m. The meeting locationremains the same. The meeting is closed to the public.

Dated: May 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12729 Filed 5–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Pocket Projectors

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of pocket projectors. CBP was asked to consider two manufacturing scenarios, under which certain operations would be performed in Taiwan or in China. Based upon the facts presented, CBP has concluded that the manufacturing and testing operations performed in Taiwan do not substantially transform the non-TAA country components. The light engine module and the PCBA main board are the essence of the projectors and it is at their production where the last substantial transformation occurs. Therefore, when the light engine module and PCBA main board module are assembled and programmed in China, the country of origin of the projectors is China for purposes of U.S. government procurement. However, if the light engine module and PCBA main board module are assembled and programmed in Taiwan, then the country of origin of the projectors is Taiwan for purposes of U.S. government procurement.

DATES: The final determination was issued on May 18, 2011. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before June 23, 2011.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Valuation and Special Programs Branch: (202) 325–0034.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 18, 2011, pursuant to subpart B of part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of pocket projectors which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H114395, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that, based upon the facts presented, the manufacturing and testing operations performed in Taiwan do not substantially transform the non-TAA country components of the projectors. The light engine module and the PCBA main board are the essence of the projector and it is at their production where the last substantial transformation occurs. Therefore, when the light engine module and PCBA main board module are assembled and programmed in China, the country of origin of the projectors is China for purposes of U.S. government procurement. However, if the light engine module and PCBA main board module are assembled and programmed in Taiwan, then the country of origin of the projectors is Taiwan for purposes of U.S. government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: May 18, 2011.

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

Attachment.

HQ H114395

May 18, 2011

CLA–2 OT:RR:CTF:VS H114395 HkP

CATEGORY: Marking

Munford Page Hall, Esq.
William C. Sjoberg, Esq.
Adduci, Mastriani & Schaumberg LLP, 1200 Seventeenth Street, NW, Washington, DC 20036

RE: Request for Final Determination on the Country of Origin of Pocket Projectors

Dear Mr. Hall and Mr. Sjoberg:

This is in response to your letter dated July 6, 2010, requesting a final determination on behalf of a U.S. importer, pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (CBP) Regulations (19 C.F.R. Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (TAA), as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of a pocket projector. We note that the U.S. importer is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination. In reaching our decision we have taken in account additional information submitted to this office on September 27, 2010.

FACTS:

According to the information submitted, the pocket projector is a 1.97″ × 0.59″ × 4.06″, four ounce, digital light processing (DLP) projector that uses light emitting diodes (LEDs) as its light source to project photos and videos from mobile devices onto any surface. It can produce an image size of up to 60 inches.

The projector is partly comprised of the following components.

Components of Taiwanese origin are:

(1) A digital micromirror device (DMD) (an optical semiconductor; an extremely precise light switch that enables light to be modulated digitally via millions of microscopic mirrors arranged in a rectangular array. Each mirror is spaced less than 1 micron apart);

(2) A Digital Photonic Processor (DPP) 1505 chip that drives the DMD and stores image data;

(3) An Electrically Erasable Programmable Read-Only Memory (EEPROM) chip (PROM 1505 chip);

(4) Light emitting Diodes (LEDs);

(5) Lenses that control light for each designated location;

(6) A printed circuit board assembly integrated circuit (PCBA–IC);

(7) PCBs for the main board and DMD board; and,

(8) The battery.

In addition, two types of firmware are developed in Taiwan. The first type of firmware is made up of four categories of data, developed in either the U.S or Taiwan, that are programmed into the EEPROM: (1) The startup logo image that is projected on the screen when the projector is turned on (developed in Taiwan), (2) test patterns that are projected on the screen to determine whether the projector meets specifications (developed in the USA), (3) red/green/blue (RGB) LED duty cycle settings (developed in the USA), and (4) the Gamma table, which affects the voltage-to-light intensity of the RGB LEDs (developed in the USA), compiled into one binary file. The second type of firmware is designed and written in Taiwan. It is stored in a flash memory chip mounted on the PCBA main board and is accessed by the video display controller, also on the main board. Once the projector is operational, the memory chip will send the information in its file to the processor, i.e., the DPP 1505 chip that drives the DMD chip, as well as to the thermal thermistor and to the audio processor.

Components of Chinese origin are:

(1) The projecting lens;

(2) Mirrors;

(3) Parts related to electrical function (e.g., ICs capacitors, resistors, inductors and transistors).

Components of Japanese origin are:

(1) The fly eyes, a lens array which provides light uniformity; and

(2) PCBA ICs.

Components of Thai, U.S., Korean, and Malaysian origin are:

PCBA ICs.

In the first scenario we have been asked to consider, the PCBA–ICs from Japan, Thailand, the U.S., Korea, and Malaysia, and fly eyes from Japan will be shipped to China. Some Taiwanese origin components (DMDs, DPP 1505 chips, EEPROMs, LEDs, and lenses) will also be shipped to China to be assembled with Chinese-origin components (PCBs, projecting lenses, mirrors, and mechanical parts), the ICs, and fly eyes to make modules for the light engine and the PCBA main board. In China, both types of Taiwanese firmware for operating the projector will also be downloaded to memory chips located on the light engine and PCBA main board modules. The modules assembled in China will then be shipped to Taiwan where they will undergo quality inspections.

In the second scenario, the PCBA–ICs from Japan, Thailand, the U.S., Korea, and Malaysia, and fly eyes from Japan will be shipped to Taiwan. The assembly and programming operations that take place in China, described in the first scenario, will all be performed in Taiwan.

The next process occurs only in Taiwan, regardless of whether the processes described above are performed in China or Taiwan. A top cover, high viscosity protection film, transparent LED lens, top graphite plate, two thermal pads, a slide switch, inside and outside lens covers, an anti-dust sponge, and a screw, will be assembled to form the "top cover module." A bottom cover, battery pull tape, EMI mylar cover, and graphite plate will be assembled to form the "bottom cover module." The engine module and the PCBA main board subassemblies imported from China will then be assembled with the top and bottom cover modules, as well as with components such as a focus ring, washer, screws, audio-video connector and battery covers, rubber feet, and a speaker, to create a complete pocket projector. Assembly processes in Taiwan include gluing, screwing, fitting and inserting, and adhering by electrostatic means.

The finished projector will undergo a series of tests in Taiwan: A pre-test, a run-in test, and a function test. The pre-test consists of: ensuring that the projector has the correct current value; using a programmable video pattern generator to check the projected logo, firmware version and model name while the projector is in Service Mode; and, if necessary, updating (reprogramming) the firmware installed in China. The run-in test ensures that the projector displays a clear image over a set period of time, and is conducted by manipulating the focus ring and making menu selections on the projector while it is in Service Mode. The function test involves: Checking resolution, flare, unbalance, gray scale, color uniformity, projection image, and white pattern; connecting the projector to a programmable video pattern generator to check the master pattern for abnormal image and color lines; audio testing using a DVD player; verifying battery charge/discharge by inserting a fully charged battery into the projector to ensure that the projector works; using a light meter to measure brightness, color uniformity, contrast ratio, and color coordinate; using menu selections while in Service Mode to double check model name, firmware version and run-in time; and, if necessary, using menu selections while in Service Mode to adjust the color parameter of the firmware on the PCBA main board to optimize the projection image.

After the projector passes the function test, it will be sent to the packing department where it will be packaged with an accessory kit, a user manual, a warranty and other product literature.

ISSUE:

What is the country of origin of the pocket projector for purposes of U.S. government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States,* 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd,* 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

You argue that, regardless of where assembly and programming operations take place, Taiwan is the country of origin of the projector because Taiwan is the location where the following actions occur: design and development of the projector, including the PCBA used in the projector; addition of the majority of value of the projector, both in terms of value and labor; fabrication of many of the parts, including the DMD, the DPP 1505 chip, the PROM 1505 chip and the LEDs; development of the firmware; the disparate parts are enabled and made into a functional projector; testing and adjustments; and, packing. In support of your argument you cite Headquarters Ruling Letters (HQ) H100055 (May 28, 2010), HQ H034843, (May 5, 2009), HQ H015324 (April 23, 2008), and HQ 555578 (June 11, 1990), among others.

HQ H100055 concerned the country of origin of a motorized lift unit, designed, developed and engineered in Sweden, for an overhead patient lift system. The unit was assembled by teams of employees in a four segment process: manufacturing the electrical motor, drum and motor package in a 17 step process; mounting batteries and installing the exterior covers of the drum/motor assembly in a 5-step process; connecting a PCBA to the motor, housed drum and batteries in a three-step process; and, assembling the emergency strap, cover and end caps in a 14-step process. The PCBA was assembled and programmed prior to its importation in

Sweden but it was designed in Sweden and its software program was written in Sweden. In addition the completed lift unit was tested in Sweden by an accredited testing institute. CBP found that the manufacturing and testing operations in Sweden were sufficiently complex and meaningful to transform the individual components into the lift unit, thereby making Sweden the country of origin of the unit.

HQ H034843 concerned the country of origin of a USB flash drive partially manufactured in China and in Israel or the United States. Assembly took five minutes to complete and involved six manufacturing steps: Initial quality control, component mounting; device housing; software installation and customization; system diagnosis and testing; and packaging. The first three steps took place in China and the last three in Israel or the United States. CBP concluded that there was a substantial transformation either in Israel or in the United States, depending on the location where the final three manufacturing operations took place. You refer to the fact that in reaching our decision, CBP noted that the installation of the firmware and the application software (developed in Israel) made the flash drive functional and executed its security features, and that their installation and customization greatly increased the value of the flash drive.

In HQ H015324, CBP was asked to determine the country of origin of stereoscopic displays assembled in the U.S. from non-U.S. parts. The displays consisted of two LCD monitors, from China or Taiwan, mounted in a custom-made stand with a special beamsplitter mirror mounted at a bisecting angle between the two monitors. A graphics card in the computer transmitted right eye and left eye video separately. The importer would send one of the monitors to a third-party in the U.S. for an optical transformation process, after which the displays would be assembled, aligned and tested. CBP found that the processing and assembly operations in the U.S. resulted in a substantial transformation of the imported LCD monitors and the beamsplitter mirror into a product with a new name, character and use. In particular, we found that the polarization process performed in the U.S. changed the essential character of the LCD and imparted the stereoscopic functionality to the entire system. In addition, the assembly, testing and alignment of the display required a significant amount of time and precision by skilled technicians.

In HQ 555578, overhead projectors were produced in Haiti from components of Belgian and U.S. origin, as well as from parts fabricated in Haiti. CBP concluded that the operations performed in Haiti constituted more than a simple combining operation and resulted in a new and different article of commerce with a new name, character and use.

In this case, PCBs, memory chips, the DPP chip, integrated circuits, lenses, and LEDs from Taiwan; mirrors, the projecting lens, and various mechanical parts, including those relating to electrical function, from China; fly eyes and ICs from Japan; and, ICs from Thailand, the United States, Korea, and Malaysia, are assembled into the light engine module and the PCBA main board module in China or Taiwan. Through these operations, the individual parts lose their identities and become integral to the new and different articles. *See Belcrest Linens.* If these operations take place in China, the first scenario, then the country of origin would be China. If they take place in Taiwan, the second scenario, then the country of origin of the modules would be Taiwan. *See* HQ H015324 and HQ 555578.

After carefully considering the pertinent facts, we find that the assembly of the light engine module and the PCBA main board module, although not described to us, by their nature should include attaching active and passive as well as other components to a bare printed circuit board by soldering, gluing and other means, and is technically complex. Further, the light engine module and the PCBA main circuit board have all the major components necessary for the pocket projector to complete its function. These components are: the DMD, the processor chip that drives the DMD, the EEPROM chip programmed with firmware, and other ICs; lenses; and mirrors. *See generally, How DLP Projectors Work, wwwgizmohighway.com/hifi/dlp_projector.htm* (last accessed Nov. 9, 2010). Therefore, we find that the light engine module and PCBA main board manufactured in China or Taiwan impart the essential character of the projector.

If the light engine module and PCBA main board module are assembled and programmed in China then, upon importation into Taiwan, the Chinese modules are joined together with a cable and then fitted into the top and bottom covers of the projectors made in Taiwan, which are then screwed and/or glued together. All together, the assembly, testing, and packaging operations in Taiwan consist of 80 steps and take approximately 2 hours and 20 minutes to complete. Applying the principle in *Belcrest Linens,* we find that the fit-together, glue and screw operations undertaken in Taiwan are not sufficiently complex and meaningful to transform the Chinese modules, which are the essence of the projector, into a new article with a new name, use and identity. Moreover, the Taiwanese subassemblies, the top and bottom covers of the projectors, are not necessary for the projector to function. In addition, the testing performed in Taiwan merely consists of turning on and running the projector and adjusting its preprogrammed menu selections. Based on these facts, we find that the last country where a substantial transformation occurs is China. Therefore, the country of origin of the projectors is China. If, however, the light engine module and PCBA main board module are assembled and programmed in Taiwan, then the country of origin would be Taiwan.

We note that HQ H034843 is distinguishable from this case. In HQ H034843, the components of the flash drives were mounted and housed in one country and then the completed drives were shipped to another country for programming. Likewise, a different fact pattern also occurs in HQ H100055. In that case, the programming of the PCB took place in one country and the assembly of the lift unit, including the incorporation of the programmed PCB into the unit, took place in another. The motor and drum assembly that formed the essence of the lift unit was made in Sweden and the PCBA, which was programmed with software designed and written in Sweden, was incorporated into the unit in Sweden. In the present case, however, the essential components of the projector (the engine light module and the PCBA main board) are fabricated in the same country in which they are programmed, either China or Taiwan, and housed in Taiwan.

HOLDING:

Based on the facts in this case, we find that the manufacturing and testing operations performed in Taiwan do not substantially transform the non-TAA country components. The light engine module and the PCBA main board are the essence of the projector and it is at their production where the last substantial transformation occurs. Therefore, when the light engine module and PCBA main board module are assembled and programmed in China, the country of origin of the projectors is China for purposes of U.S. government procurement. However, if the light engine module and PCBA main board module are assembled and programmed in Taiwan, then the country of origin of the projectors is Taiwan for purposes of U.S. government procurement.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell,

Executive Director, Regulations and Rulings Office of International Trade.

[FR Doc. 2011–12713 Filed 5–23–11; 8:45 am]

BILLING CODE ;P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–47]

Notice of Submission of Proposed Information Collection to OMB Section 5(h) Homeownership Program for Public Housing: Reporting

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork

Reduction Act. The Department is soliciting public comments on the subject proposal.

Public Housing Agencies (PHAs) maintain sales and financial records of their plan. Residents may apply to PHAs to purchase units.

DATES: *Comments Due Date: June 23, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0201) and *should be sent to:* HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Section 5(h) Homeownership Program for Public Housing: Reporting.

OMB Approval Number: 2577–0201.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Public Housing Agencies (PHAs) maintain sales and financial records of their plan. Residents may apply to PHAs to purchase units.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	73	10		0.3		219

Total Estimated Burden Hours: 219.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 19, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–12802 Filed 5–23–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–46]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Section 8 Random Digit Dialing Fair Marketing Rent Surveys

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

These surveys provide HUD with a way to estimate Section 8 Fair Market Rents (FMRs) in areas not covered by the American Community Survey annual reports and in areas where FMRs are believed to be incorrect. The affected public would be those renters random selected to be surveyed and Section 8 voucher holders. The change in this request from what has been approved is to include the use of cell phones, mail surveys and web-based surveys. The burden on the respondent and on those contacted but screened out is to less than in the previous requests because fewer surveys are being conducted. Minor changes have been made to the survey instrument to make it clearer .

DATES: *Comments Due Date:* June 23, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number (2528–0142) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *e-mail: OIRA-Submission@omb.eop.gov; fax:* 202–395–3086.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Colette.Pollard@HUD.gov;* telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

This Notice also lists the following information:

Title of Proposal: Section 8 Random Digit Dialing Fair Marketing Rent Surveys.

Description of Information Collection: These surveys provide HUD with a way to estimate Section 8 Fair Market Rents (FMRs) in areas not covered by the American Community Survey annual reports and in areas where FMRs are believed to be incorrect. The affected public would be those renters random selected to be surveyed and Section 8 voucher holders. The change in this request from what has been approved is to include the use of cell phones, mail surveys and web-based surveys. The burden on the respondent and on those contacted but screened out is to less than in the previous requests because fewer surveys are being conducted. Minor changes have been made to the survey instrument to make it clearer.

OMB Control Number: 2528–0142.

Agency Form Numbers: None.

Members of Affected Public: Individuals or Households.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	2,314	1		0.260		602

Status of the proposed information collection: Emergency Collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 18, 2011.

Colette Pollard,

Departmental Reports Management Officer, Officer of the Chief Information Officer.

[FR Doc. 2011–12805 Filed 5–23–11; 8:45 am]

BILLING CODE 4210–67–P

INTER-AMERICAN FOUNDATION BOARD

Sunshine Act Meetings

TIME AND DATE: June 6, 2011, 9 a.m.–1:30 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open session.

MATTERS TO BE CONSIDERED:

- Approval of the Minutes of the March 28, 2011, Meeting of the Board of Directors
- Strategic Plan
- Advisory Council
- Next Meetings

PORTIONS TO BE OPEN TO THE PUBLIC:

- Approval of the Minutes of the March 28, 2011, Meeting of the Board of Directors
- Strategic Plan
- Advisory Council
- Next Meetings

PORTIONS TO BE CLOSED TO THE PUBLIC:

- None

CONTACT PERSON FOR MORE INFORMATION: Jennifer Hodges Reynolds, (703) 306–0002.

Jennifer Hodges Reynolds,

General Counsel.

[FR Doc. 2011–12961 Filed 5–20–11; 4:15 pm]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[Docket No. BOEM–2011–0012]

Outer Continental Shelf (OCS) Renewable Energy Program Interim Policy Leasing for Marine Hydrokinetic Technology Testing Offshore Florida

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice of Intent (NOI) to Prepare an Environmental Assessment (EA).

SUMMARY: This notice is being published as an initial step for the purpose of involving Federal agencies, states, tribes, local government, and the public in the leasing decision for an offshore technology testing facility located on the OCS, in accordance with the Department of the Interior and the Council on Environmental Quality (CEQ) regulations implementing the provisions of the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4321 *et seq.*). On November 6, 2007, the Minerals Management Service (MMS), now BOEMRE, announced an interim policy for authorizing the issuance of leases for the installation of offshore data collection and technology testing facilities on the OCS (72 FR 62673). A lease application has been submitted pursuant to the interim policy, initiating the need for an EA.

On June 11, 2010 Florida Atlantic University's (FAU) Southeast National Marine Renewable Energy Center (SNMREC) submitted an application to lease three OCS blocks, approximately nine to 15 nautical miles offshore of Fort Lauderdale, Florida, under its original nomination submitted on November 8, 2007. These three blocks are located on the Atlantic OCS in the Official Protraction Diagram NG 17–06 numbered 7003, 7053, and 7054. The proposed lease area ranges from a depth of 262 meters (m) in Block 7053 to 366 m in the southern half of Block 7054. This project application was amended on February 10, 2011, and describes data collection and technology testing activities to be conducted on the proposed lease. FAU SNMREC intends to deploy a single-anchor mooring, with a mooring and telemetry buoy (MTB) (similar to the Navy Oceanographic Meteorological Automatic Device (NOMAD) weather buoys) for the purpose of testing, for limited periods, equipment designed to use the Florida current to generate electricity on the proposed leasehold. The proposed MTB would act as both a sensor and measurement platform and mooring point for a platform or vessel which can deploy small-scale ocean current devices. The device(s) to be deployed would be limited to 100-kilowatt (kW) power extraction and seven-meter diameter rotor(s). Initially, it is proposed to deploy an experimental demonstration device with 20 kW maximum power and a three-meter rotor diameter from a vessel moored to the MTB.

BOEMRE intends to prepare an EA for the purpose of considering the environmental consequences associated with issuing an interim policy lease to FAU SNMREC, which will include impacts that may result from the installation of an MTB, deployment of small-scale ocean current devices, and operations of a deployment vessel on the potential leasehold. The EA will consider multiple environmental issues, including impacts to benthic habitats, sea turtles, pelagic fishes, marine mammals, and existing human uses. At a minimum, the alternatives that will be considered are no action (*i.e.,* no issuance of a lease), and the issuance of a lease and approval of certain technology testing activities within the lease area, such as deployment of technology demonstration devices, single anchor moorings, and an MTB.

With this NOI, BOEMRE is requesting comments and input from Federal, state,

and local government agencies, tribal governments, and other interested parties, which may assist BOEMRE in identifying the important environmental issues and any additional alternatives that should be considered in the EA. Input is also requested regarding measures (e.g., limitations on activities based on technology, siting, or timing) that would mitigate impacts to environmental resources and socioeconomic conditions that could result from leasing and the technology testing activities in the lease area. Consultation with other Federal agencies, tribal governments, and affected states will be carried out during the EA process and will be completed before a final decision is made on whether, or under what circumstances to issue a lease.

Authority: This NOI to prepare an EA is published pursuant to 43 CFR 46.305.

FOR FURTHER INFORMATION CONTACT: Michelle Morin, BOEMRE Office of Offshore Alternative Energy Programs, 381 Elden Street, MS 4090, Herndon, Virginia 20170–4817, (703) 787–1340 or *michelle.morin@boemre.gov*.

SUPPLEMENTARY INFORMATION:

1. Interim Policy

Subsection 8(p)(1)(C) of the OCS Lands Act (43 U.S.C. 1337(p)(1)(3)), which was added by section 388 of the Energy Policy Act of 2005 (EPAct), gave the Secretary of the Interior the authority to issue leases, easements and rights-of-way on the OCS for alternative energy activities. This authority has been delegated to BOEMRE. In a Request for Information and Nominations published on November 6, 2007, in the **Federal Register** (72 FR 62673) BOEMRE announced that it had established an interim policy under which it would issue limited leases authorizing alternative energy resource assessment, data collection, and technology testing activities on the OCS and that it was accepting nominations for limited leases to conduct such activities. Limited leases issued under the interim policy for energy resource assessment data collection and technology testing activities have a term of 5 years, and do not authorize the production or transmission of energy. In response to the November 6, 2007 notice, BOEMRE received more than 40 nominations proposing areas for limited leases on the OCS off the Pacific and Atlantic Coasts.

BOEMRE reviewed in detail all nominations received and, on April 18, 2008, identified 16 proposed lease areas for priority consideration based on factors such as the technological complexity of the project proposed, timing needs, competing OCS space-use issues, and relevant state-supported renewable energy activities and initiatives (73 FR 21152). BOEMRE also took into consideration the importance of supporting the advancement of activities related to the development of each of the renewable energy resource types that would be studied in the proposals—wind, current, and wave. Of the 16 areas, BOEMRE identified four proposed areas offshore Florida as priority areas for the testing of ocean current technology and the collection of resource data.

In the April 18, 2008 notice, BOEMRE also solicited from interested parties expressions of competitive interest in leasing any of these nominated areas. See 43 U.S.C. 1337(p)(3). The notice also invited comments and solicited information from the public regarding the suitability of these areas for leasing and the environmental and socioeconomic consequences that may be associated with issuing research leases in these areas. BOEMRE received no indications of competitive interest in acquiring leases within these four areas offshore Florida, which include the three blocks identified in FAU SNMREC's most recent application. As a result, BOEMRE intends to make a final decision on whether to proceed with the issuance of a lease noncompetitively, once the required environmental review, which is the subject of this NOI, is completed.

Interim policy leases will be governed by the terms outlined in the interim policy lease and stipulations published in the **Federal Register** (73 FR 21363) on April 21, 2008. More information about the interim policy can be found at: *http://www.boemre.gov/offshore/RenewableEnergy/RegulatoryInformation.htm#Interim_Policy*.

2. Cooperating Agencies

BOEMRE invites other Federal agencies and state, tribal, and local governments to consider becoming cooperating agencies in the preparation of the EA. CEQ regulations implementing the procedural provisions of NEPA define cooperating agencies as those with "jurisdiction by law or special expertise" (40 CFR 1508.5). Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and remember that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision-making authority of any other agency involved in the NEPA process.

Upon request, BOEMRE will provide potential cooperating agencies with a draft Memorandum of Agreement that includes a schedule with critical action dates and milestones, mutual responsibilities, designated points of contact, and expectations for handling pre-decisional information. Agencies should also consider the "Factors for Determining Whether to Invite, Decline, or End Cooperating Agency Status" in Attachment 1 to CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the NEPA. A copy of this document is available at: *http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html* and *http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html.*

BOEMRE, as the lead agency, will not provide financial assistance to cooperating agencies. Even if an organization is not a cooperating agency, opportunities will exist to provide information and comments to BOEMRE during the normal public input phases of the NEPA/EA process.

3. Comments

Federal, state, local government agencies, tribal governments, and other interested parties are requested to send their written comments regarding important environmental issues and the identification of reasonable alternatives related to the proposed issuance of a limited lease to FAU SNMREC on which it intends to conduct data collection and technology testing activities in one of the following ways:

1. *Electronically: http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter "BOEM–2011–0012," then click "Search". Follow the instructions to submit public comments and view supporting and related materials available for this document.

2. *In written form, delivered by hand or by mail, enclosed in an envelope labeled* "*Comments on OCS Renewable Energy Program Interim Policy Lease for FAU SNMREC*" to Program Manager, Office of Offshore Alternative Energy Programs (MS 4090), Bureau of Ocean Energy Management, Regulation and Enforcement, 381 Elden Street, Herndon, Virginia 20170.

Comments should be submitted no later than June 23, 2011.

Dated: May 18, 2011.

L. Renee Orr,

Acting Associate Director for Offshore Energy and Minerals Management.

[FR Doc. 2011–12724 Filed 5–23–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2011–N104; FY 11 91100–3740–GRNT 7C]

Proposed Information Collection; Migratory Birds and Wetlands Conservation Grant Programs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on December 31, 2011. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by July 25, 2011.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *INFOCOL@fws.gov* (e-mail). Please include 1018–0100 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *INFOCOL@fws.gov* (e-mail) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Division of Bird Habitat Conservation administers grant programs associated with the North American Wetlands Conservation Act (NAWCA), Public Law 101–233 and the Neotropical Migratory Bird Conservation Act (NMBCA), Public Law 106–247. Currently, information that we collect for NMBCA grants is approved under OMB Control No. 1018–0113, which expires March 31, 2012. We are proposing to consolidate NAWCA and NMBCA grants under OMB Control No. 1018–0100. If OMB approves this request, we will discontinue OMB Control Number 1018–0113.

North American Wetlands Conservation Act Grants

NAWCA provides matching grants to organizations and individuals who have developed partnerships to carry out wetlands conservation projects in the United States, Canada, and Mexico for the benefit of wetlands-associated migratory birds and other wildlife. There is a Standard and a Small Grants Program. Both are competitive grants programs and require that grant requests be matched by partner contributions at no less than a 1-to-1 ratio. Funds from U.S. Federal sources may contribute to a project, but are not eligible as match.

The Standard Grants Program supports projects in Canada, the United States, and Mexico that involve long-term protection, restoration, and/or enhancement of wetlands and associated uplands habitats. In Mexico, partners may also conduct projects involving technical training, environmental education and outreach, organizational infrastructure development, and sustainable-use studies.

The Small Grants Program operates only in the United States. It supports the same type of projects and adheres to the same selection criteria and administrative guidelines as the U.S. Standard Grants Program. However, project activities are usually smaller in scope and involve fewer project dollars. Grant requests may not exceed $75,000, and funding priority is given to grantees or partners new to the NAWCA Grants Program.

We publish notices of funding availability on the Grants.gov Web site at *http://www.grants.gov* as well as in the Catalog of Federal Domestic Assistance at *http://cfda.gov.* To compete for grant funds, partnerships submit applications that describe in substantial detail project locations, project resources, future benefits, and other characteristics that meet the standards established by the North American Wetlands Conservation Council and the requirements of NAWCA. Materials that describe the program and assist applicants in formulating project proposals are available on our Web site at *http://www.fws.gov/birdhabitat/Grants/NAWCA.* Persons who do not have access to the Internet may obtain instructional materials by mail. We have not made any major changes in the scope and general nature of the instructions since the OMB first approved the information collection in 1999.

Neotropical Migratory Bird Conservation Act

NMBCA establishes a matching grant programs to fund projects that promote the conservation of neotropical migratory birds in the United States, Canada, Latin America, and the Caribbean.

We publish notices of funding availability on the Grants.gov Web site as well as in the Catalog of Federal Domestic Assistance. To compete for grant funds, partnerships submit applications that describe in substantial detail project locations, project resources, future benefits, and other characteristics that meet the standards established by the Fish and Wildlife Service and the requirements of NMBCA.

Materials that describe the program and assist applicants in formulating project proposals for consideration are available on our Web site at *http://www.fws.gov/birdhabitat/Grants/NMBCA/index.shtm.* Persons who do not have access to the Internet may obtain instructional materials by mail. We have not made any major changes in the scope and general nature of the instructions since the OMB first approved the information collection in 2002.

II. Data

OMB Control Number: 1018–0100.

Title: Migratory Birds and Wetlands Conservation Grant Programs.

Service Form Number(s): None.

Type of Request: Extension of currently approved collection.

Description of Respondents: Domestic and foreign individuals, businesses and other for-profit organizations; educational organizations; not-for-profit institutions; and Federal, State, local, and/or tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of responses	Completion time per response (hours)	Total annual burden hours
NAWCA Small Grants—Applications	87	87	58	5,046
NAWCA Small Grants—Reports	109	109	33	3,597
NAWCA U.S. Standard Grants—Applications	77	77	215	16,555
NAWCA Canadian and Mexican Standard Grants—Applications	32	32	80	2,560
NAWCA Standard Grants—Reports	188	188	86	16,168
NMBCA Grant Applications	106	106	62	6,572
NMBCA Reports	71	71	42	2,982
Totals	670	670		53,480

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 19, 2011.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2011–12807 Filed 5–23–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N103; 96200–1672–0002–R5]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; International Conservation Grant Programs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service, FWS) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on May 31, 2011. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before June 23, 2011.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *INFOCOL@fws.gov* (e-mail). Please include 1018–0123 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *INFOCOL@fws.gov* (e-mail) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0123.

Title: International Conservation Grant Programs.

Service Form Number: 3–2338.

Type of Request: Revision of a currently approved collection.

Description of Respondents: Domestic and nondomestic individuals; nonprofit organizations; educational institutions; private sector entities; and State, local, and tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of responses	Completion time per response (hours)	Total annual burden hours
Applications	668	668	22	14,696
Reports	302	604	40	24,160
Totals	970	1,272		38,856

Abstract: Some of the world's most treasured and exotic animals are dangerously close to extinction. Destruction of natural habitat, illegal poaching, and pet-trade smuggling are devastating populations of tigers, rhinos, marine turtles, great apes, elephants, and many other highly cherished species. The Division of

International Conservation administers competitive grant programs funded under the:

- African Elephant Conservation Act (16 U.S.C. 4201–4245).
- Asian Elephant Conservation Act of 1997 (16 U.S.C. 4261).
- Great Ape Conservation Act of 2000 (Pub. L. 106–411).
- Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. 5306).
- Marine Turtle Conservation Act (Pub. L. 108–266).
- Endangered Species Act (16 U.S.C. 1531 *et seq.*) (Wildlife Without Borders Programs—Africa; Mexico; Latin America and the Caribbean; Russia; Critically Endangered Animals; and Amphibians in Decline).

Currently, information that we collect for Critically Endangered Animals grants is approved under OMB Control No. 1018–0142, which expires December 31, 2012. Information collection for Amphibians in Decline grants is approved under OMB Control No. 1018–0144, which expires September 30, 2013. We are proposing to consolidate all of our international conservation grants under OMB Control No. 1018–0123. If OMB approves this request, we will discontinue OMB Control Numbers 1018–0142 and 1018–0144.

Applicants submit proposals for funding in response to Notices of Funding Availability that we publish on Grants.gov. We collect the following information:

- Cover page with basic project details (FWS Form 3–2338).
- Project summary and narrative.
- Letter of appropriate government endorsement.
- Brief curricula vitae for key project personnel.
- Complete Standard Forms 424 and 424b (nondomestic applicants do not submit the standard forms).

Proposals may also include, as appropriate, a copy of the organization's Negotiated Indirect Cost Rate Agreement (NICRA) and any additional documentation supporting the proposed project.

The project summary and narrative are the basis for this information collection request. A panel of technical experts reviews each proposal to assess how well the project addresses the priorities identified by each program's authorizing legislation. As all of the on-the-ground projects are conducted outside the United States, the letter of appropriate government endorsement ensures that the proposed activities will not meet with local resistance or work in opposition to locally identified priorities and needs. Brief curricula vitae for key project personnel allow the review panel to assess the qualifications of project staff to effectively carry out the project goals and objectives. As all Federal entities must honor the indirect cost rates an organization has negotiated with its cognizant agency, we require all organizations with a NICRA to submit the agreement paperwork with their proposals to verify how their rate is applied in their proposed budget. Applicants may provide any additional documentation that they believe supports their proposal.

All assistance awards under these grant programs have a maximum reporting requirement of a:

- Mid-term report (performance report and a financial status report) due within 30 days of the conclusion of the first half of the project period, and
- Final report (performance and financial status report and copies of all deliverables, photographic documentation of the project and products resulting from the project) due within 90 days of the end of the performance period.

Comments: On October 27, 2010, we published in the **Federal Register** (75 FR 66119) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on December 27, 2010. We did not receive any comments.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: May 18, 2011.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2011–12814 Filed 5–23–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2011–N097;

[91200–1231–9BPP–L2]

Proposed Information Collection; Conservation Order for Light Geese

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on October 31, 2011. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by July 25, 2011.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *INFOCOL@fws.gov* (e-mail). Please include 1018–0103 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *INFOCOL@fws.gov* (e-mail) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

The number of light geese (lesser snow, greater snow, and Ross' geese) in the midcontinent region has nearly quadrupled during the past several decades due to a decline in adult mortality and an increase in winter survival. We refer to these species and subspecies as light geese because of their light coloration as opposed to dark geese, such as white-fronted or Canada

geese. Because of their feeding activity, light geese have become seriously injurious to their habitat as well as to habitat important to other migratory birds. This poses a serious threat to the short- and long-term health and status of some migratory bird populations. We believe that the number of light geese in the midcontinent region has exceeded long-term sustainable levels for their arctic and subarctic breeding habitats and that the populations must be reduced. Title 50 Code of Federal Regulations (CFR) part 21 provides authority for the management of overabundant light geese.

Regulations at 50 CFR 21.60 authorize States and tribes in the midcontinent and Atlantic flyway regions to control light geese within the United States through the use of alternative regulatory strategies. The conservation order authorizes States and tribes to implement population control measures without having to obtain a permit, thus significantly reducing their administrative burden. The conservation order is a streamlined process that affords an efficient and effective population reduction strategy, rather than addressing the issue through our permitting process. Furthermore, this strategy precludes the use of more drastic and costly direct population-reduction measures such as trapping and culling geese. *States and tribes participating in the conservation order must:*

• Designate participants and inform them of the requirements and conditions of the conservation order. Individual States and tribes determine the method to designate participants.

• *Keep records of activities carried out under the authority of the conservation order, including:*

(1) Number of persons participating in the conservation order;

(2) Number of days that people participated in the conservation order;

(3) Number of persons who pursued light geese with the aid of a shotgun capable of holding more than three shells;

(4) Number of persons who pursued light geese with the aid of an electronic call;

(5) Number of persons who pursued light geese during the period one-half hour after sunset;

(6) Total number of light geese shot and retrieved during the conservation order;

(7) Number of light geese taken with the aid of an electronic call;

(8) Number of light geese taken with the fourth, fifth, or sixth shotgun shell;

(9) Number of light geese taken during the period one-half hour after sunset; and

(10) Number of light geese shot, but not retrieved.

• Submit an annual report summarizing the activities conducted under the conservation order on or before September 15 of each year. Tribal information can be incorporated in State reports to reduce the number of reports submitted.

II. Data

OMB Control Number: 1018–0103.

Title: Conservation Order for Light Geese, 50 CFR 21.60.

Service Form Number(s): None.

Type of Request: Extension of currently approved collection.

Description of Respondents: State and tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Number of Respondents: 39.

Number of Annual Responses: 39.

Completion Time per Response: 74 hours (collect information from respondents, maintain records, and prepare reports).

Total Annual Burden Hours: 2,886.

Estimated Annual Nonhour Burden Cost: $97,500, primarily for overhead costs (materials, printing, postage, *etc.*)

III. Comments

We invite comments concerning this information collection on:

• Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

• The accuracy of our estimate of the burden for this collection of information;

• Ways to enhance the quality, utility, and clarity of the information to be collected; and

• Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 19, 2011.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2011–12810 Filed 5–23–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N105; 96300–1671–0000–R5]

Receipt of Application for Approval

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for approval; request for comment.

SUMMARY: The public is invited to comment on the following application for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992.

DATES: Written data, comments, or requests for a copy of this application must be received by June 23, 2011.

ADDRESSES: Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: Chief, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax 703/358–2298.

FOR FURTHER INFORMATION CONTACT: Craig Hoover, Chief, Branch of Operations, Division of Management Authority, at 703–358–2095.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following application for approval to conduct certain activities with bird species covered under the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c). Written data, comments, or requests for copies of this complete application should be submitted to the Chief (address above).

Applicant: Ms. Heather E. Bright, Parker, Colorado.

The applicant wishes to establish a cooperative breeding program for the Swift Parrot (*Lathamus discolor*). The approval would be for the cooperative breeding program and all its members, including the applicant. If approved, the program will be overseen by the Rocky Mountain Society of Aviculture.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 18, 2011.

Craig Hoover,

Chief, Branch of Operations, Division of Management Authority.

[FR Doc. 2011–12756 Filed 5–23–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2011–N054; 40136–1265–0000–S3]

Atchafalaya National Wildlife Refuge, LA; Draft Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Atchafalaya National Wildlife Refuge (NWR) in St. Martin and Iberville Parishes, Louisiana, for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we must receive your written comments by June 23, 2011.

ADDRESSES: You may obtain a copy of the Draft CCP/EA by contacting Ms. Tina Chouinard, via U.S. mail at Fish and Wildlife Service, 3006 Dinkins Lane, Paris, TN 38242, or via e-mail at *tina_chouinard@fws.gov.* Alternatively, you may download the document from our Internet Site at *http://southeast.fws.gov/planning* under "Draft Documents." Comments on the Draft CCP/EA may be submitted to the above postal address or e-mail address.

FOR FURTHER INFORMATION CONTACT: Ms. Tina Chouinard, at 731/432–0981 (telephone).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Atchafalaya NWR. We started the process through a **Federal Register** notice on January 9, 2009 (74 FR 915). For more about the refuge and our CCP process, please see that notice.

Atchafalaya NWR is one of eight refuges managed as part of the Southeast Louisiana National Wildlife Refuge Complex (Complex). Atchafalaya NWR is in the lower Atchafalaya Basin Floodway System in Louisiana. Atchafalaya NWR is bounded on the north by U.S. Highway 190, on the south by Interstate 10, on the west by the Atchafalaya River, and on the east by the East Atchafalaya Basin Protection Levee.

Atchafalaya NWR was established in 1986, when 15,255 acres were purchased from the Iberville Land Company. The Louisiana Department of Wildlife and Fisheries (LDWF) and the U.S. Army Corps of Engineers (USACE) have also purchased fee title lands adjacent to and within the Atchafalaya NWR, bringing the total to approximately 44,000 acres. The USACE has authority to purchase additional lands within the Atchafalaya Basin Floodway System.

Approximately 12 percent of the refuge is inundated open water, with isolated cypress trees and willow stands. Bottomland hardwood forest is the primary habitat.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Significant issues addressed in this Draft CCP/EA include: (1) Forest management; (2) biological inventorying and monitoring; (3) land protection; (4) oil and gas operations; (5) enhancing wildlife-dependent public use; and (6) increasing permanent staff.

CCP Alternatives, Including Our Proposed Alternative

We developed three alternatives for managing the refuge and chose Alternative B as the proposed alternative. A full description of each alternative is in the Draft CCP/EA. We summarize each alternative below.

Alternative A—Current Management (No Action)

This alternative is required by the National Environmental Policy Act (NEPA) and is the "no-action" or "status quo" alternative, in which we would not initiate major management changes. This alternative also provides a baseline to compare the current habitat, wildlife, and public use management to the two action alternatives.

Alternative A continues current management strategies, with little or no change in budgeting or funding. We would continue to focus on maintaining the biological integrity of the refuge's habitats. Under this alternative, we would protect and maintain all refuge lands, primarily focusing on the needs of threatened and endangered species, with additional emphasis on the needs of migratory birds and resident wildlife.

Conservation of federally listed threatened and endangered species would be continued through current habitat management and monitoring programs, to be accomplished primarily through established partnership and research projects.

Current management of migratory birds would continue to provide suitable habitat for waterfowl, contributing to the objective of the North American Waterfowl Management Plan. The current levels of surveying, monitoring, and managing of migratory and resident birds would continue. We would also continue to provide for their basic needs of feeding, resting, and breeding.

Mostly opportunistic monitoring and management of resident wildlife would occur under this alternative. Only current refuge wildlife management programs would continue to be maintained, and since little baseline biological information would be gathered on non-managed species or groups of species, new management activities would be unlikely.

The Complex would continue habitat management of existing greentree

reservoirs, wetlands, open waters, forested habitats, scrub/shrub habitats, grasslands, and open lands. All impoundments, levees, moist-soil units, and water control structures would continue to be maintained to provide critical habitat for threatened and endangered species, waterfowl, and wetland-dependent birds. Current water quality information would be addressed on an as-needed basis and would continue to be limited. All other habitat management programs would remain unchanged.

Control of invasive and exotic plant species would continue on an opportunistic basis as resources permit. This limited control would be performed by chemical and/or mechanical means. Additionally, efforts to control/remove invasive, exotic, or nuisance wildlife would continue. These species tend to procreate rapidly and can be especially destructive to habitats. Control would continue to be implemented by the take of these animals as part of the hunting program and on an opportunistic basis by staff.

We would maintain the current levels of wildlife-dependent recreation activities (i.e., hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation) and facilities.

Hunting opportunities on refuge lands are managed by LDWF as part of the Sherburne Wildlife Management Area (WMA) and would continue. Due to the complex boundaries and multi-ownership, all hunting and fishing regulations are set by LDWF as part of a cooperative management agreement and fall under the rules and regulations of Sherburne WMA. This offers less confusion to the visiting public and also makes it easier to enforce laws.

The refuge is open year round for sport fishing in accordance with State fishing regulations. Fishermen frequent Big Alabama Bayou and some of the smaller waters of the Complex. Recreational crawfishing is allowed on the refuge. The Complex maintains four boat launching facilities, with parking areas that provide bayou access. There is also a designated pier for fishing.

Law enforcement would continue at the current level, with emphasis on resource protection and public safety. We would continue to share five staff members: Refuge manager, forester, biologist, park ranger (public use specialist), and law enforcement officer.

Alternative B—Optimize Biological and Visitor Services (Proposed Alternative)

We selected Alternative B as the proposed alternative, because we believe it best signifies the vision, goals, and purposes of the refuge. Additionally, this alternative was developed based on public input and the best professional judgment of the planning team. Under Alternative B, our emphasis would be on restoring and improving refuge resources needed for wildlife and habitat management and providing enhanced appropriate and compatible wildlife-dependent public use opportunities, while addressing key issues and refuge mandates.

This alternative would focus on augmenting wildlife and habitat management to identify, conserve, and restore populations of native fish and wildlife species, with an emphasis on migratory birds and threatened and endangered species. This objective would partially be accomplished by increased monitoring of waterfowl, other migratory and resident birds, and endemic species, in order to assess and adapt management strategies and actions. Additionally, information gaps would be addressed by the initiation of baseline surveying, periodic monitoring, and, ultimately, the addition of adaptive habitat management.

Habitat management programs for impoundments, greentree reservoirs, wetlands, open waters, forested habitats, scrub/shrub habitats, grasslands, and open lands would be reevaluated, and step-down management plans would be developed to meet the foraging, nesting, and breeding requirements of priority species. Additionally, monitoring and adaptive habitat management would be implemented to potentially counteract the impacts associated with long-term climate change and sea-level rise.

The control of invasive, exotic, and/or nuisance wildlife and plant species would be more aggressively managed by implementing a management plan, completing a baseline inventory, supporting research, and controlling with strategic mechanical and chemical means.

Alternative B enhances visitor service opportunities by: (1) Improving the quality of fishing opportunities; (2) implementing an environmental education program component that utilizes volunteers and local schools as partners; (3) enhancing wildlife viewing and photography opportunities by implementing blinds, a swamp trail boardwalk, and additional observational areas; (4) developing and implementing a visitor services management plan, working with partners to develop a Complex visitor center, including a law enforcement office and maintenance facility with an attached visitors' contact station; and (5) enhancing personal interpretive and outreach opportunities. Volunteer programs and friends groups also would be expanded to enhance all aspects of management and to increase resource availability.

In addition to the enforcement of all Federal and State laws applicable to the refuge to protect archaeological and historical sites, we would identify and develop a plan to protect all known sites. The development of an onsite office for law enforcement officers would not only better provide security for these resources, but would also ensure visitor safety and public compliance with refuge regulations.

Land acquisitions within the approved acquisition boundary would be based on the importance of the habitat for wildlife, management, and access. Administrative plans would stress the need for increased maintenance of existing infrastructure and construction of new facilities. Funding for new construction projects would be balanced between habitat management and public-use needs. Additional staff would include: Visitor services specialist, assistant manager, biological technician, forestry technician, maintenance worker, and law enforcement officer. The increased budget and staff levels would better enable us to meet the obligations of wildlife stewardship, habitat management, and public use.

Alternative C—Maximize Public Use

Active management of refuge resources would be employed under this alternative to optimize public use opportunities. Staff and resources would be dedicated to increasing the public-use activities of hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. All purposes of the refuge and mandated monitoring of Federal trust species and archaeological resources would continue, but other wildlife management would be dependent on public interests.

We would prioritize habitat management of species of public interest. Wetlands, the greentree reservoirs, and moist-soil units would be maintained to facilitate public use opportunities, such as fishing and canoeing. Forest habitat in high public use areas would be managed, while all other areas would have little management intervention. Forest opening demonstration sites would be implemented to serve as educational opportunities for public and private land managers. The control of invasive and exotic plant species would be more aggressively managed in public use areas.

Increased wildlife observation, wildlife photography, and interpretation opportunities would result from the construction of an on-site Complex visitor center, boardwalk, canoe and birding tours, kiosks, and trail signs. Additionally, waterfowl and wildlife monitoring would be conducted periodically to identify areas of high use for the visiting public to observe. Environmental education would be expanded by addressing a wide range of local environmental concerns and would be offered to a broader range of student groups and schools through teacher workshops. A new on-site environmental education facility would be developed to better facilitate the new programs and workshops. New information brochures, tear sheets, and website postings would be published to increase public outreach and to promote public use and recreational opportunities.

Land acquisitions within the approved acquisition boundary would be based on the importance of the habitat for public use. Administration plans would stress the need for increased maintenance of existing infrastructure and construction of new facilities that would benefit public use activities. Additional funding would be needed to maintain the maximum number of trails and roads for access and to provide full-time staff and new facilities to support expanded public use activities.

Next Step

After the comment period ends, we will analyze the comments and address them.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: April 6, 2011.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2011–12698 Filed 5–23–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–EA–2011–N098]

Wildlife and Hunting Heritage Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting of the Wildlife and Hunting Heritage Conservation Council (Council).

DATES: *Meeting:* Wednesday June 15, 2011 from 10:30 a.m. to 5 p.m. and Thursday, June 16, 2011, from 8 a.m. to 4 p.m. (Eastern daylight time). *Meeting Participation:* The meeting is open to the public who have pre-registered (see "Public Input"). However, if you wish to make an oral presentation, you must notify Joshua Winchell (see **FOR FURTHER INFORMATION CONTACT**) by close of business on June 6, 2011. Presentations are limited to 2 minutes per speaker. The meeting will accommodate no more than a total of 30 minutes for all public speakers. Written comments must be received by June 3, so that the information may be made available to the Council for their consideration prior to this meeting.

ADDRESSES: On June 15th, the meeting will be held in the Secretary's Conference Room at the Department of the Interior, Room 5160, 1849 C Street, NW., Washington, DC 20240. On June 16th the meeting will be held in Room 104A of the U.S. Department of Agriculture Jamie L. Whitten Building, located at 12th St. and Jefferson Drive, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Joshua Winchell, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; telephone (703) 358–2639; fax (703) 358–2548; or e-mail *joshua_winchell@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that Wildlife and Hunting Heritage Conservation Council will hold a meeting.

Background

Formed in February 2010, the Council provides advice about wildlife and habitat conservation endeavors that:

(a) Benefit recreational hunting;

(b) Benefit wildlife resources; and

(c) Encourage partnership among the public, the sporting conservation community, the shooting and hunting sports industry, wildlife conservation organizations, the States, Native American tribes, and the Federal Government.

The Council advises the Secretary of the Interior and the Secretary of Agriculture, reporting through the Director, U.S. Fish and Wildlife Service (Service), in consultation with the Director, Bureau of Land Management (BLM); Chief, Forest Service (USFS); Chief, Natural Resources Service (NRCS); and Administrator, Farm Services Agency (FSA). The Council's duties are strictly advisory and consist of, but are not limited to, providing recommendations for:

(a) Implementing the Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;

(b) Increasing public awareness of and support for the Sport Wildlife Trust Fund;

(c) Fostering wildlife and habitat conservation and ethics in hunting and shooting sports recreation;

(d) Stimulating sportsmen and women's participation in conservation and management of wildlife and habitat resources through outreach and education;

(e) Fostering communication and coordination among State, Tribal, and Federal Government; industry; hunting and shooting sportsmen and women; wildlife and habitat conservation and management organizations; and the public;

(f) Providing appropriate access to Federal lands for recreational shooting and hunting;

(g) Providing recommendation to improve implementation of Federal conservation programs that benefit wildlife, hunting and outdoor recreation on private lands; and

(h) When requested by the agencies' designated ex officio members or the DFO in consultation with the Council Chairman, performing a variety of assessments or reviews of policies, programs, and efforts through the Council's designated subcommittees or workgroups.

Background information on the Council is available at *http://www.fws.gov/whhcc.*

Meeting Agenda

The Council will convene to consider:

(1) The Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;

(2) Conservation programs within the Farm Bill;

(3) Programs of the Department of the Interior and Department of Agriculture,

and their bureaus, that enhance hunting opportunities and support wildlife conservation; and

(4) other Council business.

The final agenda will be posted on the Internet at *http://www.fws.gov/whhcc.*

Public Input

Interested members of the public may present, either orally or through written comments, information for the Council to consider during the public meeting. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, are encouraged to submit these comments in written form to the Council after the meeting.

Individuals or groups requesting an oral presentation at the public Council meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact Joshua Winchell, Council Coordinator, in writing (preferably via email), by June 6 (See **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this meeting. Written comments must be received by June 3, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements must be supplied to the Council Coordinator in both of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats: Adobe Acrobat PDF, Microsoft Word, Microsoft PowerPoint, or RTF (Rich Text File).

In order to attend this meeting, you must register by close of business June 6. Because entry to Federal buildings is restricted, all visitors are required to pre-register to be admitted. Please submit your name, time of arrival, e-mail address, and phone number to Joshua Winchell via e-mail at *joshua_winchell@fws.gov,* or by phone at (703) 358–2639.

Summary minutes of the conference will be maintained by the Council Coordinator at 4401 N. Fairfax Drive, MS–3103–AEA, Arlington, VA 22203, and will be available for public inspection within 90 days of the meeting and will be posted on the Council's Web site at *http://www.fws.gov/whhcc.*

Dated: May 17, 2011.

Gregory E. Siekaniec,

Acting Deputy Director.

[FR Doc. 2011–12696 Filed 5–23–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–SATD–2011–N079; FY10–90110–1420–0000]

National Fish, Wildlife, and Plants Climate Adaptation Strategy; Notice of Intent: Request for Information and Comments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), along with the National Oceanic and Atmospheric Administration (NOAA, Department of Commerce) and other Federal, State, and tribal partners, announce that we are seeking public comments and information necessary to prepare a draft National Fish, Wildlife, and Plants Climate Adaptation Strategy (Strategy). The Strategy will provide a unified approach—reflecting shared principles and science-based practices—for reducing the negative impacts of climate change on fish, wildlife, plants, habitats, and our natural resource heritage. It will serve as a valuable tool for Federal and State agencies, wildlife managers, tribes, and private landowners as they continue to manage their lands and natural resources in a changing environment.

DATES: To ensure that we are able to consider your comments and information as we develop our draft strategy document, please submit them on or before July 1, 2011 (see **ADDRESSES**).

We will release a draft Strategy in November 2011; at that time, we will allow additional opportunity for the public to provide comments. We expect to complete the final Strategy by May of 2012. Please visit the Strategy Web site at *http://www.wildlifeadaptationstrategy.gov* for announcements of upcoming public meetings and engagement opportunities, as well as additional materials and information.

ADDRESSES: Submit comments electronically through our website at *http://www.wildlifeadaptationstrategy.gov/contact-us.php.* Alternatively, you may send comments by U.S. mail to the Office of the Science Advisor, Attn: National Fish, Wildlife, and Plants Climate Adaptation Strategy, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mark Shaffer, Office of the Science Advisor, at (703) 358–2603 (telephone), *wildlifeadaptationstrategy@fws.gov* (e-mail), or via the Strategy Web site at *http://www.wildlifeadaptationstrategy.gov.* If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: In cooperation with NOAA and other Federal, State, and tribal partners, we intend to gather information necessary to prepare a National Fish, Wildlife, and Plants Climate Adaptation Strategy (Strategy). We are seeking public comment and information as we develop a draft Strategy.

The adverse impacts of climate change transcend political and administrative boundaries. No single entity or level of government can safeguard wildlife and society against the effects of climate change. This Strategy will provide a unified approach—reflecting shared principles and science-based practice—for reducing the negative impacts of climate change on fish, wildlife, plants, habitats, and our natural resource heritage. It will serve as a valuable tool for Federal and State agencies, wildlife managers, tribes, and private landowners as they continue to manage their lands and natural resources in a changing environment.

I. Background

Climate change affects more than temperature. According to the U.S. Global Change Research Program, impacts include shifts in rainfall and storm patterns, increasing wildfires and water shortages, as well as rising sea levels, loss of sea ice, ocean acidification, and coastal flooding and erosion. These changes are already having significant effects on fish, wildlife, and plants in the United States, necessitating new resource management approaches for climate adaptation.

Rapid warming may also begin to threaten the benefits that natural systems provide to people and communities, creating new challenges for human health, infrastructure, agriculture, transportation, and energy supplies. At risk are clean air and water; flood and erosion control; natural resource jobs and income; hunting, fishing, and wildlife-related recreation; and, ultimately, our quality of life.

Most simply, climate adaptation means helping people and natural systems prepare for and cope with the effects of a changing climate. Climate adaptation is an essential complement to climate change mitigation, or efforts to decrease the rate and extent of

climate change through reducing greenhouse gas emissions or enhancing carbon uptake and storage. Coordinated adaptation planning can help limit the damage climate change causes to our natural resources and communities, and will require new approaches, additional resources, and a coordinated approach across Federal, State, and local partners.

II. Strategy Development

In response to increasing impacts of climate change and other stressors on America's natural resources, the U.S. Congress has called for the development of a national government-wide strategy to safeguard fish, wildlife, plants, and the natural systems upon which they depend. Language in the Conference Report for the Fiscal Year (FY) 2010 Interior, Environment and Related Agencies Appropriations Act (House Report 111–316, pages 76–77) urged the Council of Environmental Quality (CEQ) and the Department of the Interior (DOI) to "develop a national, government-wide strategy to address climate impacts on fish, wildlife, plants, and associated ecological processes" and "provide that there is integration, coordination, and public accountability to ensure efficiency and avoid duplication." This national Strategy will set out a unified approach to maintaining the key terrestrial, freshwater, and marine ecosystems and species, as well as the services they provide, in the face of accelerating climate change.

In the fall of 2010, the U.S. Fish and Wildlife Service and CEQ invited NOAA and State wildlife agencies (with the New York Division of Fish, Wildlife and Marine Resources as the State agencies' lead representative) to co-lead the development of the strategy. The Association of Fish and Wildlife Agencies is also providing support through a Cooperative Agreement with the Service.

Initial public outreach during 2009 and 2010 contributed toward developing the following set of key principles to help guide this effort as it moves forward:

- Endorse a national (not Federal) framework for cooperative climate response;
- Focus on national boundaries while recognizing the international nature of natural resources;
- Embrace a philosophy of collaboration and interdependence;
- Adopt landscape-scale science and management approaches;
- Integrate adaptation and mitigation efforts; and
- Utilize an ecosystem-based management approach to sustain biodiversity and ecosystem services.

A diverse group of Federal, State, and tribal agencies have been asked to participate as members of an intergovernmental Steering Committee, to provide advice and support for development of the Strategy. The Steering Committee is being supported by a Management Team composed of staff from the Fish and Wildlife Service, NOAA, the Association of Fish and Wildlife Agencies, and tribal partners.

Five Technical Teams will take primary responsibility for developing the content of the Strategy, based around five ecosystem sections (marine, coastal, inland waters, forest, and grasslands/shrublands/deserts). Each team is made up of Federal, State, and tribal representatives. Key milestones are shown below:

- Begin Outreach and Engagement Sessions—2009/2010
- Form Steering Committee—December 2010
- Hold first Steering Committee meeting—January 2011
- Establish Technical Teams—February 2011
- Hold first Technical Team meeting—March 2011
- Complete Agency Review Draft—September 2011
- Announce Public Review Draft—November 2011
- Release Final Strategy—May 2012

Ultimately, the Strategy will be a blueprint for common action that outlines needed scientific support, policy, and legal frameworks; recommended management practices; processes for integration and communication; and a framework for implementing these approaches. It will enable national and international conservation communities to harness collective expertise, authority, and skills in order to define and prioritize a shared set of conservation goals and objectives.

III. Request for Public Comments

Public involvement is critical for the development of a robust and relevant response to the impacts of climate change. Extremely valuable to the effort are public guidance on priorities, recommendations for approaches, and suggestions and contribution of issues based on local knowledge and experience.

Initial outreach and planning for the Strategy began in 2009 and early 2010, with a number of listening and engagement sessions, as well as several Conservation Leadership Forums. More information about past engagement efforts, as well as upcoming meetings and engagement opportunities, is available at *http://www.wildlifeadaptationstrategy.gov/participate.php.*

We will be accepting initial public comments through our Web site until the date specified in **DATES**. We will also accept written comments at upcoming public meetings (dates and locations to be announced on our Web site).

To ensure that any action will be as effective as possible, we request that you send relevant information for our consideration. The comments that are most useful are those that you support by quantitative information or studies and those that include citations and analyses of applicable laws and regulations. Please make your comments as specific as possible and explain the bases for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

You must submit your comments and materials by one of the methods listed above in the **ADDRESSES** section. We will not accept comments sent to an address not listed in **ADDRESSES**.

We are committed to transparency in developing and implementing the National Fish, Wildlife, and Plants Climate Adaptation Strategy. The Service, NOAA, and other partners will also actively engage interested parties, including, as appropriate, State, Tribal, and local authorities; regional governance structures; academic institutions; nongovernmental organizations; recreational interests; and private enterprise.

IV. Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

Conference Report for the Interior, Environment and Related Agencies Appropriations Act, 2010.

Dated: May 10, 2011.

Gabriela Chavarria,

Science Advisor to the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–12710 Filed 5–23–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM920000 L13100000 FI0000; NMNM 112879]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NMNM 112879, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the Class II provisions of the Federal Oil and Gas Royalty Management Act of 1982, as amended, the Bureau of Land Management received a petition for reinstatement of oil and gas lease NMNM 112879 from the lessee Crown Oil Partners LP for lands in Eddy County, New Mexico. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502 or at (505) 954–2146.

SUPPLEMENTARY INFORMATION: No valid lease has been issued that affects the lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre or fraction thereof, per year, and 16 ⅔ percent, respectively. The lessee paid the required $500 administrative fee for the reinstatement of the lease and $166 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate lease NMNM 112879, effective the date of termination, January 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Lourdes B. Ortiz,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 2011–12716 Filed 5–23–11; 8:45 am]

BILLING CODE 4310–FB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–524]

Brazil: Competitive Factors in Brazil Affecting U.S. and Brazilian Agricultural Sales in Selected Third Country Markets; Institution of Investigation and Scheduling of Hearing

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: Following receipt on April 26, 2011, of a request from the United States Senate Committee on Finance (Committee) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the U.S. International Trade Commission (Commission) instituted investigation No. 332–524, *Brazil: Competitive Factors in Brazil Affecting U.S. and Brazilian Agricultural Sales in Selected Third Country Markets.*

DATES:

June 24, 2011: Deadline for filing requests to appear at the public hearing.
July 5, 2011: Deadline for filing prehearing briefs and statements.
July 20, 2011: Public hearing.
July 27, 2011: Deadline for filing posthearing briefs and statements.
October 6, 2011: Deadline for filing all other written submissions.
March 26, 2012: Transmittal of Commission report to the Committee.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Project leader John Fry (202–708–4157 or *john.fry@usitc.gov*) or deputy project leader Brendan Lynch (202–205–3313 or *brendan.lynch@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: As requested by the Committee, the Commission will conduct an investigation and prepare a report on the competitive factors in Brazil affecting U.S. and Brazilian agricultural sales in third country markets. As requested, to the extent possible, the report will include—

1. An overview of agricultural markets in Brazil, including recent trends in production, consumption, and trade;
2. An overview of U.S. and Brazilian participation in global export markets for meat, grain, and oilseed products, particularly in the European Union, Russia, China, Japan, and markets with which Brazil has negotiated trade agreements;
3. A description of the competitive factors affecting the agricultural sector in Brazil, in such areas as costs of production, transportation and marketing infrastructure, technology, exchange rates, domestic support, and government programs related to agricultural markets;
4. A description of the growth of Brazilian multinational agribusiness firms and their effect on global food supply chains;
5. A description of the principal trade measures affecting U.S. and Brazilian exports of meat, grain, and oilseed products in major third country export markets, including sanitary and phytosanitary measures and technical barriers to trade; and
6. A quantitative analysis of the economic effects of preferential tariffs negotiated under Brazil's free trade agreements on U.S. and Brazilian exports of meat, grain, and oilseed products, as well as the economic effects of selected non-tariff measures on U.S. and Brazilian exports of meat, grain, and oilseed products in major third country export markets.

The Committee asked that the Commission's report cover the period 2006–2010, and focus on the global meat, grains, and oilseeds markets. The Committee requested that the Commission deliver its report by March 26, 2012.

Public Hearing: The Commission will hold a public hearing in connection with this investigation at the U.S.

International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on Wednesday, July 20, 2011. Requests to appear at the public hearing should be filed with the Secretary no later than 5:15 p.m., June 24, 2011, in accordance with the requirements in the "Submissions" section below. All prehearing briefs and statements should be filed with the Secretary not later than 5:15 p.m., July 5, 2011; and all posthearing briefs and statements responding to matters raised at the hearing should be filed with the Secretary not later than 5:15 p.m., July 27, 2011. All hearing-related briefs and statements should be filed in accordance with the requirements for filing written submissions set out below. In the event that, as of the close of business on June 24, 2011, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Office of the Secretary (202–205–2000) after June 24, 2011, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and all such submissions (other than pre- and post-hearing briefs and statements) should be received not later than 5:15 p.m., October 6, 2011. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Office of the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "nonconfidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

In its request letter, the Committee stated that it intends to make the Commission's report available to the public in its entirety, and asked that the Commission not include any confidential business information in the report it sends to the Committee. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: May 18, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–12672 Filed 5–23–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Equipment for Communications Networks, Including Switches, Routers, Gateways, Bridges, Wireless Access Points, Cable Modems, IP Phones, and Products Containing Same,* DN 2807; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of MOSAID Technologies, Inc. on May 18, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain equipment for communications networks, including switches, routers, gateways, bridges, wireless, access points, cable modems, IP phones, and products containing same. The complaint names as respondents Cisco Systems, Inc. of San Jose, CA; Cisco Consumer Products LLC of Irvine, CA; Cisco Systems International B.V. of Netherlands and Scientific Atlanta LLC of Lawrenceville, GA.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third

party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2807") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: May 18, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–12671 Filed 5–23–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1089 (Review)]

Orange Juice From Brazil; Notice of Commission Determination To Conduct a Full Five-Year Review Concerning the Antidumping Duty Orderon Orange Juice From Brazil

AGENCY: United States International Trade Commission.

ACTION: Notice

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orderon orange juice from Brazil would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* May 9, 2011.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On May 9, 2011, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (76 FR 5822, February 2, 2011) were adequate.A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 18, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–12673 Filed 5–23–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under The Clean Air Act

Notice is hereby given that on May 4, 2011, a proposed Consent Decree ("Decree") in *United States* v. *Rocky Mountain Pipeline System, LLC, et al.,* Civil Action No. 11–CV–1188RPM–CBS was lodged with the United States District Court for the District of Colorado.

The Decree between the United States and Rocky Mountain Pipeline System, LLC, Western Convenience Stores, Inc., and Offen Petroleum, Inc. (collectively, the "Defendants") resolves claims asserted in a simultaneously filed complaint brought pursuant to Section 211(d) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7545(d), for alleged violations of Section 211 of the Act, 42 U.S.C. 7545, and regulations promulgated thereunder at 40 CFR Part 80 ("Fuels Regulations") and 40 CFR Part 79 ("Registration Regulations"). In it's complaint the United States alleges that the Defendants are all refiners that produced gasoline by sequentially blending natural gasoline with previously certified gasoline and ethanol in tank trucks. Further the United States alleges that the Defendants' blending operations violated the Fuels Regulations and Registration Regulations by failing to comply with the sampling, testing, record keeping and reporting requirements of those regulations and by producing and distributing gasoline that exceeded the applicable Reid Vapor Pressure standards. The proposed Decree requires the Defendants to implement an environmental mitigation project, take actions to prevent future violations of the Fuel and Registration Regulations, and pay a civil penalty of $2.5 million. The environmental mitigation project requires Rocky Mountain Pipeline System to installation a domed cover on an existing fuel storage tank at its Dupont Terminal. The cover will significantly

reduce the emission of volatile organic compounds from that tank into the surrounding area.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States v. Rocky Mountain Pipeline System, LLC, et al.,* Civil Action No. 11–CV–1188RPM–CBS, DOJ No. 90–5–2–1–09998.

The Decree may be examined at the Environment and Natural Resources Division Environmental Enforcement Section, United States Department of Justice Denver Field Office located at 999 18th Street, South Terrace—Suite 370, Denver, CO 80202 or at the United States Environmental Protection Agency Region 8 office located at 1595 Wynkoop Street, Denver, Colorado 80202. During the public comment period, the proposed Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $9.50 (25¢ per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert Brook,

Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–12622 Filed 5–23–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Green Technologies and Practices (GTP) Survey

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) information collection request (ICR) titled, "Green Technologies and Practices Survey," to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 23, 2011.

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 e-mail to *dol_pra_public@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), *e-mail: 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 e-mail at *dol_pra_public@dol.gov.*

SUPPLEMENTARY INFORMATION: The Occupational Employment Statistics (OES) program has been funded to collect and produce objective and reliable information on occupational employment and wages for green jobs at the establishment level. This is to be conducted through a special employer survey. This work is necessary to meet the publication objective outlined in the FY2010 Congressional Appropriation. The GTP Survey will collect information on jobs within firms that use green technologies and practices as a part of business operations, regardless of the products or services produced.

OMB clearance is being sought for the "BLS Green Technologies and Practices Survey." The goal of the BLS and its OES program is to produce economic statistics on employment related to the use of environmentally friendly technologies and practices across the U.S. economy. Using its business establishment register, the OES program intends to survey establishments about these green activities and the associated employment. The survey will identify employers performing green activities, determine whether they have any employees performing tasks associated with these activities, gather information to classify those employees according to the Standard Occupational Classification (SOC) system, and collect wage rate information.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on February 3, 2011 (76 FR 6161).

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 the publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference ICR Reference Number 121103–1220–003. *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;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Agency: Bureau of Labor Statistics (BLS).

Title of Collection: Green Technologies and Practices Survey.

Type of Review: New Collection (Request for a new OMB Control Number).

ICR Reference Number: 201103–1220–003.

Affected Public: Private Sector—Businesses or other for-profits and not-for-profit institutions; Federal Government; State, Local, and Tribal Governments.

Total Estimated Number Responses: 27,001.

Total Estimates Annual Burden Hours: 9,001.

Total Estimated Annual Costs Burden: $0.

Dated: May 17, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–12643 Filed 5–23–11; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Consent To Receive Employee Benefit Plan Disclosure Electronically; Prohibited Transaction Exemption 86–128; Furnishing Documents to the Secretary of Labor on Request under ERISA Section 104(a)(6)

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents that are described below. The Department is not proposing to make any changes to the ICRs at this time. A copy of the ICRs may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

DATES: Written comments must be submitted to the office shown in the Addresses section on or before July 25, 2011.

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., N–5718, Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Consent to Receive Employee Benefit Plan Disclosure Electronically.

Type of Review: Extension without change of a currently approved collection of information.

OMB Number: 1210–0121.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Respondents: 50,000.

Responses: 3,400,000.

Estimated Total Burden Hours: 7,000.

Estimated Total Burden Cost (Operating and Maintenance): $170,000.

Description: The Department established a safe harbor pursuant to which all pension and welfare benefit plans covered by Title I of ERISA may use electronic media to satisfy disclosure obligations under Title I of ERISA (29 CFR 2520.104b-1). Employee benefit plan administrators will be deemed to satisfy their disclosure obligations when furnishing documents electronically only if a participant who does not have access to the employer's electronic information system in the normal course of his duties, or a beneficiary or other person entitled to documents, has affirmatively consented to receive disclosure documents. Prior to consenting, the participant or beneficiary must also be provided with a clear and conspicuous statement indicating the types of documents to which the consent would apply, that consent may be withdrawn at any time, procedures for withdrawing consent and updating necessary information, the right to obtain a paper copy, and any hardware and software requirements. In the event of a hardware or software change that creates a material risk that the individual will be unable to access or retain documents that were the subject of the initial consent, the individual must be provided with information concerning the revised hardware or software, and an opportunity to withdraw a prior consent. The Department published a Request for Information regarding electronic disclosure in the Federal Register on April 7, 2011 (75 Fed. Reg. 19285), which is unrelated to this notice. The ICR is scheduled to expire on August 31, 2011.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 86–128.

Type of Review: Extension without change of a currently approved collection of information.

OMB Number: 1210–0059.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Respondents: 4,200.

Responses: 1,168,529.

Estimated Total Burden Hours: 59,072.

Estimated Total Burden Cost (Operating and Maintenance): $711,630.

Description: Prohibited Transaction Class Exemption 86–128 permits persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions on behalf of employee benefit plans. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts in order to recapture brokerage commissions for the benefit of employee benefit plans whose assets are maintained in pooled separate accounts managed by insurance companies. This exemption provides relief from certain prohibitions in section 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of Code section 4975(c)(1)(E) or (F).

In order to insure that the exemption is not abused, that the rights of participants and beneficiaries are

protected, and that the exemption's conditions are being complied with, the Department has included in the exemption five information collection requirements. The first requirement is written authorization executed in advance by an independent fiduciary of the plan whose assets are involved in the transaction with the broker-fiduciary. The second requirement is, within three months of the authorization, the broker-fiduciary furnish the independent fiduciary with any reasonably available information necessary for the independent fiduciary to determine whether an authorization should be made. The information must include a copy of the exemption, a form for termination, and a description of the broker-fiduciary's brokerage placement practices. The third requirement is that the broker-fiduciary must provide a termination form to the independent fiduciary annually so that the independent fiduciary may terminate the authorization without penalty to the plan; failure to return the form constitutes continuing authorization. The fourth requirement is for the broker-fiduciary to report all transactions to the independent fiduciary, either by confirmation slips or through quarterly reports. The fifth requirement calls for the broker-fiduciary to provide an annual summary of the transactions. The annual summary must contain all security transaction-related charges incurred by the plan, the brokerage placement practices, and a portfolio turnover ratio. The ICR is scheduled to expire on September 30, 2011.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Furnishing Documents to the Secretary of Labor on Request under ERISA Section 104(a)(6).

Type of Review: Extension without change of a currently approved collection of information.

OMB Number: 1210–0112.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Respondents: 500.

Responses: 500.

Estimated Total Burden Hours: 44.

Estimated Total Burden Cost (Operating and Maintenance): $1,665.

Description: As a result of the Taxpayer Relief Act of 1997 (TRA 97), the plan administrators of ERISA-covered employee benefit plans no longer need to file copies of the summary plan descriptions and summaries of material modifications that are publicly available. TRA 97 added paragraph (6) to section 104(a) of ERISA. Prior to the TRA 97 amendments, ERISA required certain documents be filed with the Department so that plan participants and beneficiaries could obtain the documents without having to turn to the plan administrator. The new section 104(a)(6) authorizes the Department to request these documents on behalf of plan participants and beneficiaries. The Department issued a final implementing guidance on this matter on January 7, 2002 (67 FR 772). The ICR relating to document requests is scheduled to expire on December 31, 2011.

Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are 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 collections 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., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: May 18, 2011.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 2011–12711 Filed 5–23–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0064]

Forging Machines; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Forging Machines Standard (29 CFR 1910.218). The paperwork provisions of the Standard specify requirements for developing and maintaining inspection records and for identifying manually operated valves and switches.

DATES: Comments must be submitted (postmarked, sent, or received) by July 25, 2011.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0064, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2011–0064) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov*. For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney or

Todd Owen at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to reduce employees' risk of death or serious injury by ensuring that forging machines used by them are in safe operating condition, and employees are able to clearly and properly identify manually operated valves and switches.

Inspection of Forging Machines, Guards, and Point-of-Operation Protection Devices (paragraphs (a)(2)(i) and (a)(2)(ii)). Paragraph (a)(2)(i) requires employers to establish periodic and regular maintenance safety checks and to develop and maintain a certification record of each inspection. The certification record must include the date of inspection, the signature of the person who performed the inspection, and the serial number (or other identifier) of the forging machine inspected. Under paragraph (a)(2)(ii), employers are to schedule regular and frequent inspections of guards and point-of-operation protection devices and to prepare a certification record of each inspection that contains the date of the inspection, the signature of the person who performed the inspection, and the serial number (or other identifier) of the equipment inspected. These inspection certification records provide assurance to employers, employees, and OSHA compliance officers that forging machines, guards, and point-of-operation protection devices have been inspected, assuring that they will operate properly and safely, thereby preventing impact injury and death to employees during forging operations. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

Identification of Manually Controlled Valves and Switches (paragraphs (c), (h)(3), (i)(1) and (i)(2)). These paragraphs require proper and clear identification of manually operated valves and switches on presses, upsetters, boltheading equipment, and rivet-making machines, respectively. Marking valves and switches provide information to employees to ensure that they operate the forging machines correctly and safely.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Forging Machines (29 CFR 1910.218). The Agency is requesting to retain its current burden hour estimate of 187,264 hours associated with this Standard. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Forging Machines (29 CFR 1910.218).

OMB Number: 1218–0228.

Affected Public: Business or other for-profits.

Number of Respondents: 27,700.

Frequency: Biweekly.

Average Time per Response: Varies from 2 minutes (.03 hour) for an employer to disclose certification records to 8 minutes (.13 hour) for a manufacturing employee to conduct an inspection of each forging machine and guard or point-of-operation protection device biweekly.

Estimated Total Burden Hours: 187,264.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0064). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted

material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2010 (72 FR 55355).

Signed at Washington, DC, on May 19, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–12744 Filed 5–23–11; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 11–049]

National Space-Based Positioning, Navigation, and Timing (PNT) Advisory Board; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), and the President's 2004 U.S. Space-Based Positioning, Navigation, and Timing (PNT) Policy, the National Aeronautics and Space Administration announces a meeting of the National Space-Based Positioning, Navigation, and Timing (PNT) Advisory Board.

DATES: Thursday, June 9, 2011, 9 a.m. to 5 p.m.; and Friday, June 10, 2011, 9 a.m. to 1 p.m.

ADDRESSES: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Crystal V and VI, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Miller, Space Operations Mission Directorate, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4417.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register. *The agenda for the meeting includes the following topics:*

- Update on U.S. Space-Based PNT Policy and Global Positioning System (GPS) modernization.
- Explore opportunities for enhancing the interoperability of GPS with other emerging international Global Navigation Satellite Systems.
- Examine emerging trends and requirements for PNT services in U.S. and international arenas through PNT Board technical assessments.
- Prioritize current and planned GPS capabilities and services while assessing future PNT architecture options.
- Review GPS Standard Positioning Service Performance Standards and effects on non-ICD compliant receivers.
- Address future challenges to PNT service providers and users such as protecting the emerging role of PNT in cyber networks, including the need for back-ups.

Kathy Dakon,

Acting Director, Advisory Committee Management Division, National Aeronautics and Space Administration.

[FR Doc. 2011–12678 Filed 5–23–11; 8:45 am]

BILLING CODE 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: 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 National Science Foundation (NSF) will publish periodic summaries of proposed projects.

DATES: Written comments on this notice must be received by July 25, 2011 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

For Additional Information or Comments: Suzanne Plimpton on (703) 292–7556 or send e-mail 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). You also may obtain a copy of the data collection instrument and instructions from Suzanne Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: National Evaluation of the Alliances for Graduate Education and the Professoriate interview and focus group protocols.

OMB Approval Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection for one year.

Proposed Project: The Division of Human Resource Development of the Education and Human Resources Directorate (EHR/HRD) of the National Science Foundation has requested information on the Alliances for Graduate Education and the Professoriate (AGEP) Program. Funded by NSF, the AGEP Program has funded 5 alliances of postsecondary institutions to promote the participation of underrepresented minority students in PhD programs in the fields of social, behavioral and economic sciences (SBE). The ultimate goal of the program is to increase the number of underrepresented minorities in these fields who enter the professoriate. NSF seeks information from participants—that is, students and faculty—to determine what influence the program has had on minority graduate students' decisions to enroll in and graduate from SBE doctoral programs and enter the professoriate. NSF proposes one-time site visits to all universities within two of the five AGEP SBE alliances (a total of 11 institutions) to conduct interviews and/or focus groups with AGEP SBE program staff, as well as faculty members and graduate students who participate in AGEP-funded activities.

Estimate of Burden: The Foundation estimates that, on average, 90 minutes will be required to conduct each program staff interview (2 per institution) and 60 minutes will be required for each faculty or student focus group (6 participants per group per institution). The Foundation estimates a total of up to 33 hours to complete all program staff interviews and 132 hours to complete all faculty and student focus groups bringing the total burden hours to 165 for all respondents. A subset of respondents from the 11 institutions that received NSF AGEP support will be asked to participate.

Respondents: AGEP SBE program staff at 11 AGEP SBE institutions; SBE faculty at 11 AGEP SBE institutions and

SBE graduate students at 11 AGEP institutions.

Estimated Total number of Respondents: 154.

Estimated Total Annual Burden on Respondents: 165 hours.

Dated: May 18, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–12663 Filed 5–23–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by June 23, 2011. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (2011–001) to Dr. Steven D. Emslie on April 27 2011. The issued permit allows the applicant access to numerous Antarctic Specially Protected Areas (ASPA's) in the Antarctic Peninsula and McMurdo Sound/Ross Sea area to visit abandoned and active penguin colonies to excavate organic remains (bones, tissue, feathers, eggshell fragments, otoliths, squid beaks and other prey remains. Access to the ASPA is on an opportunistic basis.

The applicant requests a modification to his permit to add two additional ASPA's in the Ross Sea regions (ASPA 158—Cape Adair and ASPA 160—Cape Geology) in case there is an opportunity to access the sites.

Location: Ross Sea and McMurdo Sound area and the Antarctic Peninsula regions.

Dates: October 1, 2011 to September 30, 2012.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2011–12664 Filed 5–23–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by June 23, 2011 This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:* Jonathan Thom, Space Science and Engineering Center, University of Wisconsin-Madison, 1225 W. Dayton Street, Madison, WI 53706.

Permit Application No. 2012–002.

Activity for Which Permit is Requested: Enter an Antarctic Specially Protected Area. The applicant plans to enter Cape Hallett (ASPA #106) to consolidate the two automatic weather stations (AWS) currently deployed into one station. The two existing stations will be removed and replaced with one new station. The new AWS will be installed on a tripod support and will include standard meteorological instrumentation (wind, pressure, solar radiation, temperature and relative humidity).

Location: Cape Hallett—ASPA #106.

Dates: November 2, 2011 to January 31, 2012.

1. *Applicant:* Jo-Ann Mellish, Alaska SeaLife Center, 301 Railway Avenue, Seward, AK 99664–1329.

Permit Application No. 2012–003.

Activity for Which Permit is Requested: Take and Enter an Antarctic Specially Protected Area. The applicant plans capture up to a total of 40 Weddell seals (weaned pups through non-pregnant adults) over a two-year period to collect morphometric measurements, including weighing, collect blood samples and blubber samples. In addition, a telemetry pack will be glued to the fur in the mid-dorsal region to record diving depth, swim speed, ambient temperature and light levels, stomach temperature, heat flux and skin temperature. Also a stroke frequency sensor will be glued to the base of the tail. The glued instruments will be retrieved after approximately a week. Should an instrumented animal haul out in at Cape Royds (ASPA #121), they will attempt to usher the animal outside the ASPA before retrieving the instruments.

Despite being an essential physiological component of homoeothermic life in polar regions, little is known about the energetic requirements for thermoregulation in

either air or water for high-latitude seals. Utilizing a two-part study including a hypothesis-driven field experiment and an objective driven model component, the applicant will quantify these costs for the Weddell seal under both ambient air and water conditions. The wide range of body size (80 kg pups–450 kg adults) and condition (10–45% total body fat) of these seals makes them an ideal model polar species to investigate both physiological costs and limitations of thermoregulation as a function of body mass and isolative properties.

Location: Delbrige Islands, Turtle Rock, Hutton Cliffs, the Erebus glacier tongue, Turks Head, other suitable areas in McMurdo Sound, and Cape Royds (ASPA #121).

Dates: October 2, 2011 to January 31, 2013.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2011–12658 Filed 5–23–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–010; NRC–2011–0108]

Exelon Nuclear, Dresden Nuclear Power Station, Unit 1; Exemption From Certain Security Requirements

1.0 Background

Exelon Nuclear is the licensee and holder of Facility Operating License No. DPR–2 issued for Dresden Nuclear Power Station (DNPS), Unit 1, located in Grundy County, Illinois. DNPS Unit 1 is a permanently shutdown nuclear reactor facility that began commercial operation in October 1960 and shutdown on October 31, 1978. The facility is in a SAFSTOR condition. Spent fuel has been removed from the facility and is currently stored either in an Independent Spent Fuel Storage Installation (ISFSI) or the DNPS Unit 3 spent fuel pool, both located within the protected area of DNPS Units 2 and 3. Additionally, the DNPS Unit 1 spent fuel pool has been drained and decontaminated. The reactor vessel and primary system piping remain in place. DNPS Unit 1 is currently licensed pursuant to Section 104(b) of the Atomic Energy Act of 1954, as amended, and 10 CFR 50, "Domestic Licensing of Production and Utilization Facilities," to possess and maintain, but not to operate, the facility.

2.0 Action

Section 50.54(p)(1) of Title 10 of the Code of Federal Regulations states, in part, "The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with Appendix C of part 73 of this chapter for affecting the actions and decisions contained in the Responsibility Matrix of the safeguards contingency plan."

Part 73 of Title 10 of the Code of Federal Regulations, "Physical Protection of Plant and Materials," provides in part, "This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used." In Section 73.55, entitled "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (b)(1) states, "The licensee shall establish and maintain a physical protection program, to include a security organization, which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

The NRC revised 10 CFR 73.55, in part to include the preceding language, through the issuance of a final rule on March 27, 2009 (74 FR 13926). The revised regulation stated that it was applicable to all Part 50 licensees. The NRC became aware that many part 50 licensees with facilities in decommissioning status did not recognize the applicability of this regulation to their facility. Accordingly, the NRC informed licensees with facilities in decommissioning status and other stakeholders that the requirements of 10 CFR 73.55 were applicable to all part 50 licensees. By letter dated August 2, 2010, the NRC informed Exelon Nuclear of the applicability of the revised rule and stated that it would have to evaluate the applicability of the regulation to its facility and either make appropriate changes or request an exemption.

By letter dated December 3, 2010, Exelon Nuclear responded to the NRC's letter and requested exemptions from the security requirements in 10 CFR Part 73 and 10 CFR 50.54(p).

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present when, for example, application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or when compliance would result in costs significantly in excess of those incurred by others similarly situated. Also, pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant exemptions from the regulations in part 73 as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The purpose of the security requirements of 10 CFR part 73, as applicable to a 10 CFR part 50 licensed facility, is to prescribe requirements for a facility that possesses and utilizes SNM. With the completion of the transfer of the DNPS Unit 1 spent nuclear fuel to either the ISFSI site or DNPS Unit 3 spent fuel pool, both located within the protected area of Units 2 and 3, there is no longer any SNM located within DNPS Unit 1 other than that contained in plant systems as residual contamination.

The remaining radioactive material of concern (*i.e.,* reactor vessel, piping systems, and building structures) for DNPS Unit 1 is in a form that does not pose a risk of removal (*i.e.,* an intact reactor pressure vessel) and is well dispersed and is not easily aggregated into significant quantities. With the removal of the fuel containing SNM, the potential for radiological sabotage or diversion of SNM at the 10 CFR part 50 licensed site was eliminated. Therefore, the continued application of the fixed site physical protection requirements of 10 CFR part 73 to DNPS Unit 1 would no longer be necessary to achieve the underlying purpose of the rule. Additionally, as has been noted at other decommissioning nuclear power facilities, with the removal of the spent nuclear fuel from the site, the 10 CFR part 50 licensed site would be comparable to a source and byproduct licensee that uses general industrial security (*i.e.* locks and barriers) to protect the public health and safety. The continued application of the fixed site physical protection requirements of 10 CFR part 73 security requirements would cause the licensee to expend significantly more funds for security requirements than other source and byproduct facilities that use general industrial security. Therefore,

compliance with the fixed site physical protection requirements of 10 CFR part 73 would result in costs significantly in excess of those incurred by others similarly situated. Based on the above, the NRC has determined that the removal of the fuel containing SNM at the 10 CFR part 50 licensed site constitutes special circumstances. With the SNM removed from the Unit 1 site, the protection of the SNM is no longer a requirement of the licensee's 10 CFR part 50 license. With no SNM to protect, there is no need for the physical protection requirements of 10 CFR part 73, which includes a safeguards contingency plan or procedures, physical security plan, guard training and qualification plan, or cyber security plan for the DNPS Unit 1, 10 CFR part 50 licensed site. The requirements for protection of safeguards information, physical protection of SNM in transit, and records and reports remain applicable.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security based on the continued maintenance of appropriate security requirements for the SNM. Additionally, special circumstances are present based on the removal of the spent nuclear fuel from the 10 CFR part 50 licensed site. Therefore, the Commission hereby grants Exelon Nuclear an exemption from the requirements of 10 CFR 50.54(p) at DNPS Unit 1.

The Commission has also determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest because the security requirements for the spent fuel containing SNM are no longer the responsibility of the licensee. Therefore, the Commission hereby grants Exelon Nuclear an exemption from the fixed site physical protection requirements of 10 CFR part 73 at DNPS Unit 1. The fixed site physical protection requirements of 10 CFR part 73 are delineated in 73.20, 74.40, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.56, 73.57, 73.58, 73.59, 73.60, 73.61, 73.67, Appendix B and Appendix C. The requirements for protection of safeguards information, physical protection of SNM in transit, and records and reports, contained in these or other sections of Part 73 continue to apply. To the extent that the licensee's request for an exemption from 10 CFR part 73 included the requirements other than for the fixed site physical protection requirements, that request is denied.

Part of this licensing action meets the categorical exclusion provision in 10 CFR part 51.22(c)(25), as part of this action is an exemption from the requirements of the Commission's regulations and (i) There is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve safeguard plans. Therefore, this part of the action does not require either an environmental assessment or an environmental impact statement.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact related to part of this exemption was published in the **Federal Register** on May 17, 2011 (76 FR 28480). Based upon the environmental assessment, the Commission has determined that issuance of this exemption will not have a significant effect on the quality of the human environment.

These exemptions are effective immediately.

Dated at Rockville, Maryland, this 17th day of May 2011.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery, Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–12784 Filed 5–23–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of May 23, 30, June 6, 13, 20, 27, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

Week of May 23, 2011

Friday, May 27, 2011

9 a.m. Briefing on Results of the Agency Action Review Meeting (AARM) (Public Meeting) (Contact: Rani Franovich, 301–415–1868).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of May 30, 2011—Tentative

Thursday, June 2, 2011

9:30 a.m. Briefing on Human Capital and Equal Employment Opportunity (EEO) (Public Meeting) (Contact: Susan Salter, 301–492–2206).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 6, 2011—Tentative

Monday, June 6, 2011

10 a.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: Tanny Santos, 301–415–7270).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 13, 2011—Tentative

Wednesday, June 15, 2011

9:30 a.m. Briefing on the Progress of the Task Force Review of NRC Processes and Regulations Following Events in Japan (Public Meeting) (Contact: Nathan Sanfilippo, 301–415–3951).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 20, 2011—Tentative

There are no meetings scheduled for the week of June 20, 2011.

* * * * *

Week of June 27, 2011—Tentative

There are no meetings scheduled for the week of June 27, 2011.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or

need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: May 19, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–12929 Filed 5–20–11; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–424 and 50–425; NRC–2011–0111]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Unit 1 and 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing and Order Imposing Procedures for Document Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license amendment request, opportunity to comment, opportunity to request a hearing, and Commission order.

DATES: Submit comments by June 23, 2011. A request for a hearing must be filed by July 25, 2011. Any potential party as defined in 10 CFR 2.4 who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by June 3, 2011.

ADDRESSES: Please include Docket ID NRC–2011–0111 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0111. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

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

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The application for amendment, dated March 3, 2011, contains proprietary information and, accordingly, those portions are being withheld from public disclosure. A redacted version of the application for amendment is available electronically under ADAMS Accession Number ML110660458.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0111.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Boyle, Project Manager, Plant Licensing Branch 2–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. *Telephone:* 301–415–3936; *fax number;* 301–415–1222; *e-mail: Patrick.Boyle@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–68 and NPF–81 issued to Southern Nuclear Operating Company, Inc. (the licensee), for operation of the Vogtle Electric Generating Plant, Units 1 and 2 (VEGP), located in Burke County, Georgia.

The proposed amendment would revise license and Technical Specifications (TSs) 3.3.1 "Reactor Trip System instrumentation," and TS 3.3.2, "Engineered Safety Features Actuation System (ESFAS) Instrumentation." Specifically, the amendment proposes the correction of a non-conservative error associated with the ESFAS Permissive P–14, "Steam Generator Water Level High-High" instrument setpoint and associated allowable value. The proposed change is described in Technical Specification Task Force Traveler TSTF–493–A, Revision 4, "Clarify Application of Setpoint Methodology for LSSS [Limiting Safety System Settings] Functions," Option A as described in the Notice of Availability published in the **Federal Register** on May 11, 2010 (75 FR 26294). TSTF–493–A revises the Improved Standard TS to address Nuclear Regulatory Commission concerns that the TS requirement for LSSS may not be fully in compliance with the intent of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.36.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or

consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the Technical Specification (TS) Table 3.3.2–1, Function 5c, Steam Generator Water Level High-High, Nominal Trip Setpoint (NTSP) and Allowable Value. The Steam Generator Water Level High-High function is not an initiator to any accident previously evaluated. As such, the probability of an accident previously evaluated is not increased. The Steam Generator Water Level High-High function revised values continue to provide reasonable assurance that the Function 5c will continue to perform its intended safety functions. As a result, the proposed change will not increase the consequences of an accident previously evaluated.

The proposed change incorporates TSTF–493–A, Revision 4, Option A, to clarify the requirements for instrumentation NTSPs and Allowable Values, thus ensuring the instrumentation will actuate as assumed in the safety analyses. The affected instruments are not an assumed initiator of any accident previously evaluated. Surveillance tests are not initiators to any accident previously evaluated. As a result, the proposed change will not increase the probability of an accident previously evaluated. The systems and components required by the TS for which tests are revised are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the proposed change will not increase the consequences of an accident previously evaluated.

The proposed change corrects a typographical error and removes an allowance that is no longer applicable. These changes are strictly administrative in nature and have no effect on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the TS Table 3.3.2–1, Function 5c, Steam Generator Water Level High-High, Nominal Trip Setpoint (NTSP) and Allowable Value. No new operational conditions beyond those currently allowed are introduced. This change is consistent with the safety analyses assumptions and current plant operating practices. This simply corrects the setpoint consistent with the accident analyses and therefore cannot create the possibility of a new or different kind of accident from any previously evaluated accident.

The proposed change incorporates TSTF–493–A, Revision 4, Option A, to clarify the requirements for instrumentation NTSPs and Allowable Values. The change does not alter assumptions made in the safety analysis but ensures that the instruments perform as assumed in the accident analysis. The proposed change is consistent with the safety analysis assumptions. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change corrects a typographical error and removes an allowance that is no longer applicable. These changes are strictly administrative in nature and, as such, cannot create the possibility of a new or different kind of accident from any previously evaluated.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the TS Table 3.3.2–1, Function 5c, Steam Generator Water Level High-High, Nominal Trip Setpoint (NTSP) and Allowable Value. Function 5c protects against excessive feedwater flow in the event of a feedwater control system malfunction or an operator error. This change is consistent with the safety analyses assumptions and current plant operating practices. No new operational conditions beyond those currently allowed are created by these changes.

The proposed change incorporates TSTF–493–A, Revision 4, Option A, to clarify the requirements for instrumentation NTSPs and Allowable Values. The proposed change adds test requirements that will assure that (1) technical specifications instrumentation Allowable Values will be limiting settings for assessing instrument channel operability and (2) will be conservatively determined so that evaluation of instrument performance history and the as-left tolerance requirements of the calibration procedures will not have an adverse effect on equipment operability. The testing methods and acceptance criteria for systems, structures, and components, specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis including the updated Final Safety Analysis Report. The proposed change provides reasonable assurance that the instrumentation will continue to perform its intended safety functions. No new operational conditions beyond those currently allowed are created by these changes.

The proposed change corrects a typographical error and removes an allowance that is no longer applicable. These changes are strictly administrative in nature and, as such, have no effect on margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received by June 23, 2011 will be considered in making any final determination. You may submit comments using any of the methods discussed under the **ADDRESSES** caption.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

II. Opportunity To Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing requests, petitions to intervene, requirements for standing, and contentions." Interested persons should consult 10 CFR Part 2, Section 2.309, which is available at the NRC's Public Document Room (PDR), Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at 1–800–397–4209 or 301–415–4737). NRC regulations are also accessible online from the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.*

III. Petitions for Leave To Intervene

Any person whose interest may be affected by this proceeding and who

wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the requestor/petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the requestor or petitioner and specifically explain the reasons why the intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the requestor/petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the requestor/petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must include a concise statement of the alleged facts or expert opinions which support the position of the requestor/petitioner and on which the requestor/petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the requestor/petitioner disputes and the supporting reasons for each dispute, or, if the requestor/petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requestor's/petitioner's belief. Each contention must be one which, if proven, would entitle the requestor/petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board (the Licensing Board) will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a presiding officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by July 25, 2011. The petition must be filed in accordance with the filing instructions in Section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian Tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by July 25, 2011.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

IV. Electronic Submissions (E-Filing)

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 ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail 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 NRC'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 Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC 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 Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from May 24, 2011. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under Paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 18th day of May 2011.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

ATTACHMENT 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

Day	Event/activity
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2011–12819 Filed 5–23–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, June 1, 2011, at 11 a.m.

PLACE: Commission hearing room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public. The open part of the meeting will be audiocast. The audiocast can be accessed via the Commission's Web site at *http://www.prc.gov.*

MATTERS TO BE CONSIDERED: The agenda for the Commission's June 2011 meeting includes the items identified below.

Portions Open to the Public

1. Report on completion of Docket No. C2009–1, Complaint of GameFly.
2. Report on submission of comments to the Postal Service on proposed post office closing regulations.
3. Report on status of dockets pending before the Commission.
4. Report on recent activities of the Joint Periodicals Task Force and status of the report to the Congress pursuant to section 708 of the PAEA.
5. Report on status of legislative review pursuant to section 701 of the PAEA and review of postal-related Congressional activity.
6. Report on Commission handling of rate and service inquiries.
7. Report on international activities.
8. Report on Commission progress toward fulfilling the obligation to establish electronic Official Personnel Files (eOPFs).

Portions Closed to the Public

9. Discussion of pending litigation.
10. Discussion of contractual matters involving sensitive business information—lease issues.
11. Discussion of information technology security implementation—docket system redesign and continuity of operations site.
12. Discussion of confidential personnel matters—performance management.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001, at 202–789–6820 (for agenda-related inquiries) and Shoshana M. Grove, Secretary of the Commission, at 202–789–6800 or *shoshana.grove@prc.gov* (for inquiries related to meeting location, access for handicapped or disabled persons, the audiocast, or similar matters).

Dated: May 20, 2011.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2011–12933 Filed 5–20–11; 4:15 pm]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2011–25; Order No. 732]

Product List Transfer

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to transfer Post Office Box Service at 6800 locations from the market dominant product list to the competitive product list. The affected locations comprise almost 44 percent of all post office boxes used by customers. This notice briefly describe the proposal, invites comments from interested persons, and takes related administrative steps.

DATES: *Comments are due:* June 10, 2011; *reply comments are due:* June 17, 2011.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx*. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

On May 13, 2011, the Postal Service filed a request under 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to transfer Post Office Box (P.O. Box) Service at selected locations from the market dominant to the competitive product list.[1]

In Order No. 473, the Commission approved the Postal Service's request to add P.O. Box Service as a new competitive product and transfer a small segment of P.O. Box Service locations to the competitive product list.[2] The Postal Service noted that it was evaluating all P.O. Box Service locations and may

[1] Request of the United States Postal Service to Transfer Post Office Box Service in Selected Locations to the Competitive Product List, May 13, 2011 (Request).

[2] Docket No. MC2010–20, Order Approving Request to Transfer Selected Post Office Box Service Locations to the Competitive Product List, June 17, 2010, at 15 (Order No. 473).

propose additional transfers if justified. *Id.* at 3.

Having completed its evaluation, the Postal Service asks the Commission to transfer P.O. Box Service at approximately 6,800 locations from the market dominant to the competitive product list. Request at 1. These locations comprise approximately one-fifth of all P.O. Box Service locations and almost 44 percent of all post office boxes used by customers. *Id.* at 1–2. If the Commission approves the Request, almost 49 percent of all post office boxes would be classified as competitive, excluding Group E boxes. *Id.* at 2 n.5.

The Postal Service selected the 6,800 locations based on whether its customers have sufficient access to private mailbox service providers. *Id.* at 2. In general, these locations serve customers who live within five miles of a current or recent private mailbox service provider. *Id.,* Attachment B at 4–5; Attachment C. The Postal Service excluded those P.O. Box Service locations that restrict customer access or have a small customer base.[3] *Id.,* Attachment B at 5–6. Those locations will remain on the market dominant product list despite their proximity to a private mailbox service provider. *Id.,* Attachment B at 10.

The Postal Service notes that it may ask the Commission to transfer other P.O. Box Service locations in the future as it studies the mailbox service market. *Id.* at 2.

To support its Request, the Postal Service filed the following attachments:

- Attachment A—Resolution of the Governors of the United States Postal Service on Transferring Selected Post Office Box Service Locations to the Competitive Product List, May 10, 2011 (Resolution No. 11–8);
- Attachment B—Statement of Supporting Justification; and
- Attachment C—Proposed MCS Changes.

II. Notice of Filing

The Commission establishes Docket No. MC2011–25 to consider the Postal Service's proposals described in its Request.

[3] For business reasons, the Postal Service excluded from the proposed transfer all locations with 250 or fewer post office box customers. Request, Attachment B at 6. However, the proposed Mail Classification Schedule (MCS) language refers to a "small customer base" without a specific definition. *Id.*, Attachment C. The Postal Service explains that it needs flexibility in the MCS language to prevent P.O. Box Service locations from switching back and forth between the market dominant and competitive product lists if the number of post office boxes exceeds or falls below 250. *Id.*, Attachment B at 10 n.14.

Interested persons may submit comments on whether the Request is consistent with the policies of 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and the general provisions of title 39. Comments are due by June 10, 2011. Reply comments are due by June 17, 2011. The Request and related filings are available on the Commission's Web site (*http://www.prc.gov*). The Commission encourages interested persons to review the Request for further details.

The Commission appoints Tracy N. Ferguson to serve as Public Representative in this proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2011–25 to consider the matters raised by the Postal Service's Request.

2. Pursuant to 39 U.S.C. 505, Tracy N. Ferguson is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons are due by June 10, 2011.

4. Reply comments are due by June 17, 2011.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–12625 Filed 5–23–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on May 25, 2011 at 9:30 a.m., in the Auditorium, Room L–002.

The subject matters of the Open Meeting will be:

Item 1: The Commission will consider whether to propose amendments to Regulation D under the Securities Act of 1933 to disqualify securities offerings involving certain "felons and other 'bad actors'" from reliance on the Rule 506 safe harbor exemption from Securities Act registration. These proposals are designed to implement Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Item 2: The Commission will consider whether to adopt rules and forms to implement Section 21F of the Securities Exchange Act of 1934 entitled "Securities Whistleblower Incentives and Protection." Section 21F, as added by Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, provides that the Commission shall pay awards, under regulations prescribed by the Commission and subject to certain limitations, to eligible whistleblowers who voluntarily provide the Commission with original information about a violation of the federal securities laws that leads to the successful enforcement of a covered judicial or administrative action, or a related action.

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: May 18, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–12878 Filed 5–20–11; 11:15 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 Thursday, May 26, 2011 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, May 26, 2011 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: May 19, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–12862 Filed 5–20–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA–46; File No. S7–20–11]

Privacy Act of 1974: Systems of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission ("Commission" or "SEC") proposes to establish three new systems of records and revise two existing systems of records. The three new systems of records are "Tips, Complaints, and Referrals (TCR) Records (SEC–63)", "SEC Security in the Workplace Incident Records (SEC–64)", and "Investor Response Information System (IRIS) (SEC–65)." In a companion release published elsewhere in this issue of the **Federal Register** the Commission is issuing a Proposed Rule concurrent with this notice. Additionally, two existing systems of records are being revised: "Personnel Management Code of Conduct and Employee Performance Files (SEC–38)", last published in the **Federal Register** Volume 62, Number 176 on Thursday, September 11, 1997; and "Enforcement Files (SEC–42)", last published in the **Federal Register** Volume 67, Number 142 on Wednesday, July 24, 2002.

DATES: The proposed systems will become effective July 3, 2011, unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before June 23, 2011.

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–20–11 on the subject line.

Paper Comments

Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–20–11. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Cristal Perpignan, Acting Chief Privacy Officer, Office of Information Technology, 202–551–7716.

SUPPLEMENTARY INFORMATION: The Commission proposes to establish three new systems of records, "Tips, Complaints, and Referrals (TCR) Records (SEC–63)", "SEC Security in the Workplace Incident Records (SEC–64)", and "Investor Response Information System (IRIS) (SEC–65)." The TCR Records (SEC–63) system of records contains records related to tips, complaints, referrals of misconduct, or related information about actual or potential violations of the Federal securities laws; investor harm; conduct of public companies; securities professionals; regulated entities; and associated persons. The SEC Security in the Workplace Incident Records (SEC–64) system of records contains records related to reports involving incidents of assault, harassment, intimidation, bullying, weapons possession or threats at the SEC workplace. The IRIS (SEC–65) system of records contains records related to complaints/inquiries/requests from members of the public and others. In a companion release published elsewhere in this issue of the **Federal Register** the Commission is issuing a Notice of Proposed Rulemaking concurrent with this notice to exempt these systems from certain provisions of the Privacy Act to the extent that they contain investigatory materials for law enforcement purposes.

Additionally, the Commission proposes to revise two existing systems of records, "Personnel Management Code of Conduct and Employee Performance Files (SEC–38)", and "Enforcement Files (SEC–42)". As described in the last published notice, the Personnel Management Code of Conduct and Employee Performance Files (SEC–38) system is used to verify employee and agency compliance with law, regulation, case decisions, agency policies, and the Collective Bargaining Agreement. Minor administrative changes to SEC–38 have been incorporated to reflect the Commission's current address in the following sections: System Location; and Notification, Access and Contesting Records Procedures. Substantive changes to the notice have been made to the following sections: (1) System Name, reflecting the new title: "Disciplinary and Adverse Actions, Employee Conduct, and Labor Relations Files"; (2) Categories of Records, deleting records no longer maintained in this system; and (3) Routine Uses, adding certain standard routine uses as applicable to this system of records (those numbered 1, 2, 4, 5, 6, 7, 8, and 9). On September 8, 2009 (74 FR 46254), the Commission published notice that records related to the Ethics Conduct Rules applicable to Commission Members and employees, including reports on securities transactions, holdings, and accounts required by applicable Federal securities laws and regulations, which were previously contained in SEC–38, would be maintained in a new systems of records titled: Ethics Conduct Rules Files (SEC–60). The Categories of Records Section of SEC–38 has been revised to reflect the removal of these records.

As described in the last published notice, the Enforcement Files (SEC–42) system will be used for purposes of the Commission's investigations and actions to enforce the Federal securities laws. Additionally, the information in the system is used in conjunction with the collection of amounts ordered to be paid in enforcement actions. Minor administrative changes to SEC–42 have been incorporated to reflect the Commission's current address in the following sections: System Location;

and Notification, Access and Contesting Records Procedures. A substantive change to the notice has been made to the Routine Uses section to allow disclosure of records in the event of a breach of records.

The Commission has submitted a report of the new systems of records and the amended existing systems of records to the appropriate Congressional committees and to the Director of the Office of Management and Budget ("OMB") as required by 5 U.S.C. 552a(r) (Privacy Act of 1974) and guidelines issued by OMB on December 12, 2000 (65 FR 77677).

Accordingly, the Commission is proposing three new systems of records and amendment of two existing systems of records to read as follows:

SEC–63

SYSTEM NAME:

Tips, Complaints, and Referrals (TCR) Records.

SYSTEM LOCATION:

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Files may also be maintained in the Commission's Regional Offices that conducted an investigation or litigation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals that submit tips, complaints, or related information about actual or potential violations of the Federal securities laws; investor harm; conduct of public companies, securities professionals, regulated entities, and associated persons; and internal and external referrals of misconduct; (2) Individuals that are the subjects of a tip or complaint related to an actual or potential securities law violation; (3) Attorneys or other related individuals; and (4) SEC personnel or contractors assigned to handle such tips, complaints, and referrals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include individual names; dates of birth; social security numbers; addresses; telephone numbers; tip, complaint, and referral information including allegation descriptions, dates, and supporting details; supporting documentation; web forms; e-mails; criminal history; working papers of the staff; and other documents and records relating to the matter.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 77a *et seq.,* 78a *et seq.,* 80a–1 *et seq.,* 80b–1 *et seq.,* and 5 U.S.C. 302.

PURPOSE(S):

For use by authorized SEC personnel in receiving, recording, assigning, tracking, and taking action on tips, complaints, and referrals received from individuals and entities related to actual or potential violations of the Federal securities laws; investor harm; or conduct of public companies, securities professionals, regulated entities and associated persons.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Commission as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

2. To other Federal, State, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.

3. To national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board; the Securities Investor Protection Corporation; the Public Company Accounting Oversight Board; the Federal banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation; state securities regulatory agencies or organizations; or regulatory authorities of a foreign government in connection with their regulatory or enforcement responsibilities.

4. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the Federal securities laws.

5. In any proceeding where the Federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.

6. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).

7. To a bar association, state accountancy board, or other Federal, State, local, or foreign licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public Company Accounting Oversight Board) for investigations or possible disciplinary action.

8. To a Federal, State, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.

9. To a Federal, State, local, tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

10. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

11. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction, or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or pursuant to the Commission's Rules of

Practice, 17 CFR 201.100–900 or the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100–1106, or otherwise, where such trustee, receiver, master, special counsel, or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the Federal securities laws or the Commission's Rules of Practice or the Rules of Fair Fund and Disgorgement Plans.

12. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

13. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

14. In reports published by the Commission pursuant to authority granted in the Federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), which authority shall include, but not be limited to, section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(a)).

15. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.

16. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735–1 to 200.735–18, and who assists in the investigation by the Commission of possible violations of the Federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the Federal securities laws.

17. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

18. To members of Congress, the press, and the public in response to inquiries relating to particular Registrants and their activities, and other matters under the Commission's jurisdiction.

19. To prepare and publish information relating to violations of the Federal securities laws as provided in 15 U.S.C. 78c(a)(47)), as amended.

20. To respond to subpoenas in any litigation or other proceeding.

21. To a trustee in bankruptcy.

22. To members of Congress, the General Accountability Office, or others charged with monitoring the work of the Commission or conducting records management inspections.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases and/or on computer disc. Paper records and records on computer disc are stored in locked file rooms and/or file cabinets.

RETRIEVABILITY:

Records may be retrieved by an individual's or entity's name, receipt date, subject matter, keywords that may include personal information, and/or other personal identifier. The system will also enable authorized SEC personnel to search for and retrieve records using conventional methods including but not limited to the use of unique record identifiers, keyword searches, geographic data (e.g. zip code), date and time searches, and sorts and filters.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. The records are kept in limited access areas during duty hours and in locked file cabinets and/or locked offices or file rooms at all other times. Access is limited to those personnel whose official duties require access. Computerized records are safeguarded through use of access codes and information technology security. Contractors and other recipients providing services to the Commission are contractually obligated to maintain equivalent safeguards.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Division of Risk, Strategy, and Financial Innovation, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information in these records may be supplied by investors and the general public, Commission-regulated entities including broker-dealers, investment advisers, self-regulatory organizations, other government agencies, and foreign regulators.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Under 5 U.S.C. 552a(k)(2), this system of records is exempted from the following provisions of the Privacy Act, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) and 17 CFR 200.303, 200.304, and 200.306, insofar as it contains investigatory materials compiled for law enforcement purposes. This exemption is contained in 17 CFR 200.312(a)(1).

SEC–64

SYSTEM NAME:

SEC Security in the Workplace Incident Records.

SYSTEM LOCATION:

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present employees, interns, and volunteers of the Securities and Exchange Commission (employees), contractors, visitors, and others who have access to SEC facilities who report potential or actual workplace violence; persons accused of threatening to commit, or committing workplace violence, and persons interviewed or investigated in connection with reports or allegations of potential or actual workplace violence.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include, but are not limited to: Case number, victim's name, office telephone number, room number, office/division, duty station, position, supervisor, supervisor's telephone number, location of incident, activity at time of incident, circumstances surrounding the incident, perpetrator, name(s) and telephone number(s) of witness(es), injured party(s), medical treatment(s), medical report, property damages, report(s) to police, and related information needed to investigate violence, threats, harassment, intimidation, or other inappropriate behavior causing SEC employees, contractors, or other individuals to fear for their personal safety in the SEC workplace.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902(d) and (e).

PURPOSE(S):

The records are used by SEC personnel to take action on, or to respond to a complaint about a threat, harassment, intimidation, violence, or other inappropriate behavior involving one or more SEC employees, contractors, interns, or other individuals against an SEC employee; and to make assessments of violent or potentially violent situations and then make recommendations regarding interventions for those persons involved with the situations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed as follows:

1. To appropriate agencies, entities, and persons when (a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

2. When a person or property is harmed, or when threats of harm to a person or property are reported, disclosure will be made, as appropriate, to law enforcement authorities, medical treatment authorities, and those persons being threatened or harmed.

3. To other Federal, State, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign securities authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.

4. To a bar association, a state accountancy board, the Public Company Accounting Oversight Board, or any similar Federal, State, or local licensing authority for possible disciplinary action.

5. To a Federal, State, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.

6. To a Federal, State, local, tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

7. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

8. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

9. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

10. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.

11. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735–1 to 200.735–18, and who assists in the investigation by the Commission of possible violations of the Federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the Federal securities laws.

12. To a Congressional office in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains.

13. To respond to subpoenas in any litigation or other proceeding.

14. To members of Congress, the Government Accountability Office, or others charged with monitoring the work of the Commission or conducting records management inspections.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases and/or on computer disc in accordance with all appropriate laws. Paper records are

stored in locked file rooms and/or file cabinets.

RETRIEVABILITY:

Records are retrieved by name or case designation (those who reported a violent or potentially violent event and those who were reported), event date, and event location.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. Access is limited to those personnel whose official duties require access. Paper records are maintained in limited access areas during duty hours and in locked file cabinets and/or locked offices or file rooms at all other times. Computerized records are safeguarded through use of access codes and information technology security.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, SEC Security Branch, 100 F Street, NE., Washington, DC 20549–5100

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

RECORD ACCESS PROCEDURE:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Records source is from individuals who report potential or actual workplace security incidents, and reports made on individuals interviewed or investigated in connection with allegations of potential or actual workplace security incidents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Under 5 U.S.C. 552a(k)(2), this system of records is exempted from the following provisions of the Privacy Act, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) and 17 CFR 200.303, 200.304, and 200.306, insofar as it contains investigatory materials compiled for law enforcement purposes. This exemption is contained in 17 CFR 200.312(a)(1).

SEC–65

SYSTEM NAME:

Investor Response Information System (IRIS).

SYSTEM LOCATION:

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Also, records covered by Subsystem A are received by and maintained in the Commission's Regional Offices, whose addresses are listed below under System Manager(s) and Address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subsystem A: Records are maintained on members of the public and others who submit inquiries or make complaints to the Commission, generally, or to Divisions and Offices of the Commission or who contact the Office of Investor Education and Advocacy (OIEA) or the Commission's Regional Offices.

Subsystem B: Records are maintained on members of the public, members of Congress or their staff, and others who address their inquiries or complaints to the Commission's Chairman or the Office of Legislative and Intergovernmental Affairs.

Subsystem C: Records are maintained on members of the public who submit requests for copies of, or review of records accessible through the Commission's Public Reference Room.

Subsystem D: Computerized records are comprised of data collected in all of the above subsystems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Both electronic and paper records in this system/subsystems may contain the name of the complainant/inquirer/requester or their representative, the name of the entity and/or subject of the complaint/inquiry/request, the date relating to the receipt and disposition of the complaint/inquiry/request and, where applicable, the type of complaint/inquiry/request and other information derived from or relating to the complaint/inquiry/request. Paper records may include, but are not limited to, letters of complaint/inquiry/request, responses, and related documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 77s, 77sss, 78d, 78d–1, 78d–2, 78w, 78ll(d), 79t, 80a–37, and 80b–11.

PURPOSE(S):

The records will be used by the staff to track and process complaints/inquiries/requests from members of the public and others.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Commission as a routine use pursuant to 5 U.S.C. 552 a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

2. To other Federal, State, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.

3. To national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board; the Securities Investor Protection Corporation; the Public Company Accounting Oversight Board; the Federal banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation; state securities regulatory agencies or organizations; or regulatory authorities of a foreign government in connection with their regulatory or enforcement responsibilities.

4. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the Federal securities laws.

5. In any proceeding where the Federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.

6. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).

7. To a bar association, state accountancy board, or other Federal, State, local, or foreign licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public Company Accounting Oversight Board) for investigations or possible disciplinary action.

8. To a Federal, State, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.

9. To a Federal, State, local, tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

10. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

11. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction, or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or pursuant to the Commission's Rules of Practice, 17 CFR 201.100–900 or the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100–1106, or otherwise, where such trustee, receiver, master, special counsel, or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the Federal securities laws or the Commission's Rules of Practice or the Rules of Fair Fund and Disgorgement Plans.

12. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

13. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

14. In reports published by the Commission pursuant to authority granted in the Federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), which authority shall include, but not be limited to, section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(a)).

15. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.

16. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735–1 to 200.735–18, and who assists in the investigation by the Commission of possible violations of the Federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the Federal securities laws.

17. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

18. To members of Congress, the press, and the public in response to inquiries relating to particular Registrants and their activities, and other matters under the Commission's jurisdiction.

19. To prepare and publish information relating to violations of the Federal securities laws as provided in 15 U.S.C. 78c(a)(47)), as amended.

20. To respond to subpoenas in any litigation or other proceeding.

21. To a trustee in bankruptcy.

22. To members of Congress, the General Accountability Office, or others charged with monitoring the work of the Commission or conducting records management inspections.

23. To respond to inquiries from individuals who have submitted complaints/inquiries/request, or from their representatives.

24. To entities against which complaints/inquiries/requests are directed when Commission staff requests them to research the issues raised and report back to the staff.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases and/or on computer disc. Paper records and records on computer disc are stored in file rooms and/or file cabinets, as well as off-site locations including the Federal Records Center, pursuant to applicable record retention guidelines.

RETRIEVABILITY:

By use of the computerized records in Subsystem D, the files (both paper and electronic) in Subsystems A, B, and C are retrievable by the name, receipt date, name of the registered representative or associated person named in the complaint/inquiry/request, or the name of the entity/issuer that is the subject of the complaint/inquiry/request.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. The records are kept in limited access areas during duty hours and in file cabinets and/or

offices or file rooms at all other times. Computerized records are safeguarded through use of access codes and information technology security. Contractors and other recipients providing services to the Commission are contractually obligated to maintain equivalent safeguards.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Subsystem A: Chief Counsel, Office of Investor Education and Advocacy, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549; New York Regional Office, Regional Director, 3 World Financial Center, Suite 400, New York, NY 10281–1022; Boston Regional Office, Regional Director, 33 Arch Street, 23rd Floor, Boston, MA 02110–1424; Philadelphia Regional Office, Regional Director, The Mellon Independence Center, 701 Market Street, Suite 2000, Philadelphia, PA 19106–1532; Miami Regional Office, Regional Director, 801 Brickell Avenue, Suite 1800, Miami, FL 33131–4901, Atlanta Regional Office, Regional Director, 3475 Lenox Road, NE., Suite 1000, Atlanta, GA 30326–1232; Chicago Regional Office, Regional Director, 175 West Jackson Boulevard, Suite 900, Chicago, IL 60604–2908; Denver Regional Office, Regional Director, 1801 California Street, Suite 1500, Denver, CO 80202–2656; Fort Worth Regional Office, Regional Director, Burnett Plaza, Suite 1900, 801 Cherry Street, Unit #18, Fort Worth, TX 76102–6882; Salt Lake Regional Office, Regional Director, 15 West South Temple Street, Suite 1800, Salt Lake City, UT 84101–1573; Los Angeles Regional Office, Regional Director, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, CA 90036–3648; San Francisco Regional Office, Regional Director, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104–4716.

Subsystem B: Office of the Chairman, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Subsystem C: Records Officer, Office of Records Management Services, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Subsystem D: Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, Operations Center, Mail Stop 0–4, 6432 General Green Way, Alexandria, VA 22312.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

CONTESTING RECORD PROCEDURES:

See Record access procedures above.

RECORD SOURCE CATEGORIES:

Information collected in all subsystems is received from individuals primarily through letters, telephone calls, or personal visits to the Commission's offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Under 5 U.S.C. 552a(k)(2), this system of records is exempted from the following provisions of the Privacy Act, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) and 17 CFR 200.303, 200.304, and 200.306, insofar as it contains investigatory materials compiled for law enforcement purposes. This exemption is contained in 17 CFR 200.312(a)(1).

SEC–38

SYSTEM NAME:

Disciplinary and Adverse Actions, Employee Conduct, and Labor Relations Files.

SYSTEM LOCATION:

Securities and Exchange Commission, Office of Human Resources, 100 F Street NE., Washington, DC 20549–3990.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former SEC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records includes information in the following categories of records: (a) Disciplinary and adverse action cases, regulatory appeal files, grievances and complaints relating to an employee, union issues (including collective bargaining documents and dues withholding forms), leave bank/transfer date, and third party complaints; (b) Investigatory materials gathered in connection with the individual's initial appointment to the agency as well as materials gathered in connection with investigations into allegations of employee misconduct.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302 & 2951 and 17 CFR 200.735–13.

PURPOSE(S):

Assigned staff uses records to verify employee and agency compliance with law, regulation, case decisions, agency policies, and the Collective Bargaining Agreement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Commission as a routine use pursuant to 5 U.S.C. 552 a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

2. To other Federal, State, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.

3. In any proceeding where the human resources law or regulations are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.

4. To a Federal, State, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the

letting of a contract; or the issuance of a license, grant, or other benefit.

5. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

6. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

7. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

8. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

9. To members of Congress, the Government Accountability Office, or others charged with monitoring the work of the Commission or conducting records management inspections.

10. To a commercial contractor in connection with benefit programs administered by the contractor on the Commission's behalf, including, but not limited to, supplemental health, dental, disability, life and other benefit programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases and/or on computer disc. Paper records and records on computer disc are stored in locked file rooms and/or file cabinets.

RETRIEVABILITY:

Records are indexed and retrieved by employee name or assigned ID.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. The records are kept in limited access areas during duty hours and in locked file cabinets and/or locked offices or file rooms at all other times. Access is limited to those personnel whose official duties require access. Computerized records are safeguarded through use of access codes and information technology security. Contractors and other recipients providing services to the Commission are contractually obligated to maintain equivalent safeguards.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Executive Director, Office of Human Resources, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3990.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

CONTESTING RECORD PROCEDURES:

See Record access procedures above.

RECORD SOURCE CATEGORIES:

Employees, managers, union officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Under 5 U.S.C. 552a(k)(2), this system of records is exempted from the following provisions of the Privacy Act, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) and 17 CFR 200.303, 200.304, and 200.306, insofar as it contains investigatory materials compiled to determine an individual's suitability, eligibility, and qualifications for Federal civilian employment or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This exemption is contained in 17 CFR 200.312(b)(1).

SEC–42

SYSTEM NAME:

Enforcement Files.

SYSTEM LOCATION:

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Files may also be maintained in the Commission's Regional Offices that conducted an investigation or litigation, or at a records management company under contract with the Commission. Closed investigatory files are stored at a Federal records center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on persons who have been involved in Commission investigations or litigation, or in activities which violated or may have violated Federal, State or foreign laws relating to transactions in securities, the conduct of securities business or investment advisory activities, and banking or other financial activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain names and addresses of persons involved in Commission investigations or litigation. Also, correspondence relevant to the matter, internal staff memoranda, Commission Minutes and Commission Orders, copies of subpoenas issued in the course of the matter, affidavits, transcripts of testimony and exhibits thereto, copies of pleadings and exhibits in related private or governmental actions, documents and other evidence obtained in the course of the matter, computerized records, working papers of the staff and other documents and records relating to the matter, opening reports, progress reports and closing reports, and miscellaneous records relating to investigations or litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 77s, 77t, 78u, 77uuu, 80a–41, and 80b–9. 17 CFR 202.5.

PURPOSE(S):

The records are maintained for purposes of the Commission's investigations and actions to enforce the Federal securities laws. Additionally, the information in the system is used in conjunction with the collection of amounts ordered to be paid in enforcement actions, a function that is a necessary component of litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Commission as a routine use pursuant to 5 U.S.C. 552 a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

2. To other Federal, State, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.

3. To national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board; the Securities Investor Protection Corporation; the Public Company Accounting Oversight Board; the Federal banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation; state securities regulatory agencies or organizations; or regulatory authorities of a foreign government in connection with their regulatory or enforcement responsibilities.

4. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the Federal securities laws.

5. In any proceeding where the Federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.

6. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).

7. To a bar association, state accountancy board, or other Federal, State, local, or foreign licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public Company Accounting Oversight Board) for investigations or possible disciplinary action.

8. To a Federal, State, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.

9. To a Federal, State, local, tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

10. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

11. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction, or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or pursuant to the Commission's Rules of Practice, 17 CFR 201.100–900 or the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100–1106, or otherwise, where such trustee, receiver, master, special counsel, or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the Federal securities laws or the Commission's Rules of Practice or the Rules of Fair Fund and Disgorgement Plans.

12. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

13. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

14. In reports published by the Commission pursuant to authority granted in the Federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), which authority shall include, but not be limited to, section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(a)).

15. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.

16. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735–1 to 200.735–18, and who assists in the investigation by the Commission of possible violations of the Federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought

by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the Federal securities laws.

17. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

18. To members of Congress, the press, and the public in response to inquiries relating to particular Registrants and their activities, and other matters under the Commission's jurisdiction.

19. To prepare and publish information relating to violations of the Federal securities laws as provided in 15 U.S.C. 78c(a)(47), as amended.

20. To respond to subpoenas in any litigation or other proceeding.

21. To a trustee in bankruptcy.

22. To any governmental agency, governmental or private collection agent, consumer reporting agency or commercial reporting agency, governmental or private employer of a debtor, or any other person, for collection, including collection by administrative offset, Federal salary offset, tax refund offset, or administrative wage garnishment, of amounts owed as a result of Commission civil or administrative proceedings.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

When the Commission seeks to collect a debt arising from a civil action or administrative proceeding, it may disclose the following information to a consumer reporting agency: (i) information necessary to establish the identity of the debtor, including name, address and taxpayer identification number or social security number; (ii) the amount, status, and history of the debt; and (iii) the fact that the debt arose from a Commission action or proceeding to enforce the Federal securities laws.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases and/or on computer disc. Paper records and records on computer disc are stored in locked file rooms and/or file cabinets.

RETRIEVABILITY:

The records are retrieved by the name under which the investigation is conducted or administrative or judicial litigation is filed. Access to information about an individual may be obtained through the Commission's Name-Relationship Search Index system by the name of the individual. Information concerning an individual may also be obtained by reference to computer-based indices maintained by the Division of Enforcement.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. The records are kept in limited access areas during duty hours and in locked file cabinets and/or locked offices or file rooms at all other times. Access is limited to those personnel whose official duties require access. Computerized records are safeguarded through use of access codes and information technology security. Contractors and other recipients providing services to the Commission are contractually obligated to maintain equivalent safeguards.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0801; Records Officer, Office of Records Management Services, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549; New York Regional Office, Regional Director, 3 World Financial Center, Suite 400, New York, NY 10281–1022; Boston Regional Office, Regional Director, 33 Arch Street, 23rd Floor, Boston, MA 02110–1424; Philadelphia Regional Office, Regional Director, The Mellon Independence Center, 701 Market Street, Philadelphia, PA 19106–1532; Miami Regional Office, Regional Director, 801 Brickell Ave., Suite 1800, Miami, FL 33131, Atlanta Regional Office, Regional Director, 3475 Lenox Road, NE., Suite 1000, Atlanta, GA 30326–1232; Chicago Regional Office, Regional Director, 175 W. Jackson Boulevard, Suite 900, Chicago, IL 60604; Denver Regional Office, Regional Director, 1801 California Street, Suite 1500, Denver, CO 80202–2656; Fort Worth Regional Office, Regional Director, Burnett Plaza, Suite 1900, 801 Cherry Street, Unit 18, Fort Worth, TX 76102; Salt Lake Regional Office, Regional Director, 15 W. South Temple Street, Suite 1800, Salt Lake City, UT 84101; Los Angeles Regional Office, Regional Director, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, CA 90036–3648; San Francisco Regional Office, Regional Director, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by: Individuals including, where practicable, those to whom the information relates; witnesses, banks, corporations, or other entities; self-regulatory organizations; the Postal Inspection Service, the Department of Justice, state securities commissions, other Federal, state, or local bodies and law enforcement agencies or foreign governmental authorities; public sources, i.e., libraries, newspapers, television, radio, court records, filings with Federal, state, and local bodies; filings made with the SEC pursuant to law; electronic information sources; other offices within the Commission; documents, litigation, transcripts of testimony, evidence introduced into court, orders entered by a court and correspondence relating to litigation; pleadings in administrative proceedings, transcripts of testimony, documents, including evidence entered in such proceedings, and miscellaneous other sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Under 5 U.S.C. 552a(k)(2), this system of records is exempted from the following provisions of the Privacy Act, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) and 17 CFR 200.303, 200.304, and 200.306, insofar as it contains investigatory materials compiled for law enforcement purposes. This exemption is contained in 17 CFR 200.312(a)(1).

By the Commission.

Dated: May 18, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–12699 Filed 5–23–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64520; File No. SR–Phlx–2011–66]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Qualified Contingent Cross Fees

May 19, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on May 13, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fee Schedule to adopt fees applicable to a Qualified Contingent Cross Order ("QCC Order") for execution in the Phlx XL II System.[3]

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 16, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 purpose of the proposed rule change is to amend Sections I and II, of the Exchange's Fee Schedule, entitled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols" [4] and "Equity Options Fees" [5] to establish fees for a new order type called Qualified Contingent Cross.[6]

There are currently several categories of market participants: Customers, Directed Participants,[7] Specialists,[8] Registered Options Traders,[9] SQTs,[10] RSQTs,[11] Broker-Dealers, Firms and Professional.[12] The Exchange proposes to adopt pricing for QCC Orders for the above categories applicable to both Sections I and II. QCC Transaction Fees will apply to the Select Symbols listed in Section I and the symbols applicable to Section II. The Exchange proposes to assess Directed Participants, Specialists, ROTs, SQTs, RSQTs, Professionals, Firms and Broker-Dealers a $0.20 per contract QCC transaction fee ("QCC Transaction Fees"). A Customer would not be assessed a QCC Fee.

As mentioned, the proposed QCC Fees would apply to Sections I and II of the Fee Schedule and would be subject to the Firm Related Equity Option Cap and the Monthly Cap. The Firm Related Equity Option Cap is currently $75,000.[13] ROTs and Specialists are currently subject to a Monthly Cap of $550,000.[14]

The Exchange also proposes additional text to Sections I and II of the Fee Schedule to describe the applicability of both the Firm Related Equity Option Cap and the Monthly Cap to those sections of the Fee Schedule.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 16, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. *See* Rule 1080(o). *See also* Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR–Phlx–2011–47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

[4] Section I fees and rebates are applicable to certain select symbols which are defined in Section I ("Select Symbols").

[5] Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed.

[6] The Qualified Contingent Cross functionality will be operative on May 16, 2011.

[7] A Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on PHLX XL II.

[8] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[9] A Registered Options Trader ("ROT") includes a Streaming Quote Trader ("SQT"), a Remote Streaming Quote Trader ("RSQT") and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014(b)(i) and (ii).

[10] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[11] An RSQT is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[12] The Exchange defines a "professional" as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter "Professional").

[13] Firm equity option transaction charges, in the aggregate, for one billing month will not exceed the Firm Related Equity Option Cap per member organization when such members are trading in their own proprietary account. The Firm equity options transaction charges will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. Firms that (i) are on the contra-side of an electronically-delivered and executed Customer complex order; and (ii) have reached the Firm Related Equity Option Cap will be assessed a $0.05 per contract fee. *See* Securities Exchange Act Release No. 63780 (January 26, 2011), 76 FR 5846 (February 2, 2011) (SR–Phlx–2011–07).

[14] The trading activity of separate ROTs and Specialist member organizations will be aggregated in calculating the Monthly Cap if there is at least 75% common ownership between the member organizations. In addition, ROTs and Specialists that (i) are on the contra-side of an electronically-delivered and executed Customer complex order; and (ii) have reached the Monthly Cap will be assessed a $0.05 per contract fee. *See* Securities Exchange Act Release No. 64113 (March 23, 2011), 76 FR 17468 (March 29, 2011) (SR–Phlx–2011–36).

consistent with Section 6(b) of the Act [15] in general, and furthers the objectives of Section 6(b)(4) of the Act [16] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed fees are equitable because the fees are within the range of fees currently assessed in Section II for Multiply Listed equity options. Customers are not assessed a fee for options overlying equities which are Multiply Listed. Other market participants are assessed transaction fees which range from $.20 per contract to $.25 per contract, generally.[17] In addition, the Exchange is proposing to assess the same fee on all market participants uniformly, with the exception of Customers. The Exchange believes that its proposal to not assess Customers QCC Transaction Fees is not unfairly discriminatory because the Exchange is seeking to incentivize Broker-Dealers and Professionals to execute Customer QCC Orders on the Exchange.

The Exchange believes that the proposed fees are reasonable because the fees are comparable to the Exchange's fees, as stated above, and because the fees are within the range of fees assessed by the International Securities Exchange, LLC ("ISE") for qualified contingent cross orders. ISE assesses $0.20 per contract for qualified contingent cross orders to all market participants [18] except the priority customer.[19]

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants readily can, and do, send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed QCC Fees it assesses must be competitive with fees assessed on other options exchanges. The Exchange believes that this competitive marketplace impacts the fees present on the Exchange today and influences the proposals set forth above.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

[17] A Broker-Dealer is the one exception to this range. A Broker-Dealer is assessed $.45 per contract for electronically submitted transactions in Penny Pilot and non-Penny Pilot options.

[18] The fee for an ISE market maker is either $.18 or $.20 per contract, depending on the product. *See* ISE's Fee Schedule. *See also* SR–ISE–2011–14.

[19] An ISE priority customer is not assessed a fee. *See* ISE's Fee Schedule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[20] 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2011–66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–66. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–66 and should be submitted on or before June 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12759 Filed 5–23–11; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12592 and #12593]

Oklahoma Disaster #OK–00047

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA—1985—DR), dated 05/13/2011.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 01/31/2011 through 02/05/2011.

Effective Date: 05/13/2011.

Physical Loan Application Deadline Date: 07/12/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/13/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/13/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Craig, Creek, Jefferson, Logan, Mayes, Nowata, Okmulgee, Osage, Ottawa, Pawnee, Pottawatomie, Rogers, Stephens, Tulsa, Wagoner, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere:	3.250
Non-Profit Organizations Without Credit Available Elsewhere:	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere:	3.000

The number assigned to this disaster for physical damage is 12592B and for economic injury is 12593B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–12700 Filed 5–23–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12582 and #12583]

Louisiana Disaster #LA–00035

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Louisiana dated 05/17/2011.

Incident: Tornado.

Incident Period: 03/05/2011.

Effective Date: 05/17/2011.

Physical Loan Application Deadline Date: 07/18/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/17/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Parish: Acadia.

CONTIGUOUS PARISHES:

Louisiana: Evangeline, Jefferson Davis, Lafayette, Saint Landry, Vermilion.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.125
Homeowners Without Credit Available Elsewhere	2.563
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere ...	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12582 C and for economic injury is 12583 0.

The State which received an EIDL Declaration # is: Louisiana.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

May 17, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–12705 Filed 5–23–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12566 and #12567]

Kentucky Disaster Number KY–00039

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Kentucky (FEMA–1976–DR), dated 05/04/2011.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/22/2011 and continuing.

Effective Date: 05/12/2011.

Physical Loan Application Deadline Date: 07/05/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/06/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Kentucky, dated 05/04/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Bath, Green, Lewis, Mason, Pendleton, Spencer, Clay, Franklin, Harlan, Lee, Owsley.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–12707 Filed 5–23–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12584 and # 12585]

Alabama Disaster Number AL–00037

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alabama (FEMA–1971–DR), dated 05/10/2011.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/15/2011 and continuing.

Effective Date: 05/13/2011.

Physical Loan Application Deadline Date: 07/11/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/10/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of ALABAMA, dated 05/10/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Cherokee, Choctaw, Colbert, Etowah, Fayette, Hale, Jefferson, Lauderdale, Lawrence, Marengo, Morgan, Saint Clair, Sumter, Talladega, Tallapoosa.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–12706 Filed 5–23–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12560 and #12561]

Arkansas Disaster Number AR–00048

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1975–DR), dated 05/02/2011.

Incident: Severe Storms, Tornadoes, and Associated Flooding.

Incident Period: 04/23/2011 and continuing.

Effective Date: 05/16/2011.

Physical Loan Application Deadline Date: 07/01/2011.

EIDL Loan Application Deadline Date: 02/02/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Arkansas, dated 05/02/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Cross, Greene, Independence, Jackson, Lawrence, Lonoke, Mississippi, Monroe, Prairie, Woodruff.

Contiguous Counties: (Economic Injury Loans Only):

Arkansas: Craighead, Izard, Stone.
Missouri: Pemiscot.
Tennessee: Dyer, Lauderdale.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–12704 Filed 5–23–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12590 and #12591]

South Dakota Disaster # SD–00041

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Dakota (FEMA–1984–DR), dated 05/13/2011.

Incident: Flooding.

Incident Period: 03/11/2011 and continuing.

Effective Date: 05/13/2011.

Physical Loan Application Deadline Date: 07/12/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/13/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/13/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Aurora, Beadle, Brookings, Brown, Buffalo, Clark, Codington, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hughes, Hyde, Jackson, Jerauld, Kingsbury, Lake, Marshall, Miner, Moody, Perkins, Potter, Roberts, Sanborn, Spink, Sully.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere:	3.250
Non-Profit Organizations Without Credit Available Elsewhere:	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere:	3.000

The number assigned to this disaster for physical damage is 125906 and for economic injury is 125916.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–12701 Filed 5–23–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12495 and #12496]

Illinois Disaster Number IL–00029

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Illinois (FEMA–1960–DR), dated 03/17/2011.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 01/31/2011 through 02/03/2011.

Effective Date: 05/16/2011.

Physical Loan Application Deadline Date: 05/16/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 12/19/2011.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of ILLINOIS, dated 03/17/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Grundy, Livingston, Mclean, Sangamon, Stephenson.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–12703 Filed 5–23–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12562 and #12563]

Arkansas Disaster Number AR–00049

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arkansas (FEMA—1975—DR), dated 05/02/2011.

Incident: Severe Storms, Tornadoes, and Associated Flooding.

Incident Period: 04/23/2011 and continuing.

Effective Date: 05/16/2011.

Physical Loan Application Deadline Date: 07/01/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/02/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Arkansas, dated 05/02/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Baxter, Boone, Calhoun, Chicot, Clark, Cleburne, Cleveland, Crittenden, Cross, Dallas, Franklin, Fulton, Greene, Howard, Independence, Izard, Johnson, Lawrence, Madison, Marion, Nevada, Newton, Perry, Pike, Polk, Searcy, Sharp, Van Buren, White, Yell.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–12702 Filed 5–23–11; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2011–0041]

On behalf of the Accessibility Committee of the Federal Chief Information Officers Council; Listening Session Regarding Improving the Accessibility of Government Information

AGENCY: Federal Chief Information Officers Council, Social Security Administration.

ACTION: Notice of meeting.

SUMMARY: This notice announces a listening session that the CIO Council is conducting in response to a memo dated July 19, 2010 from the Office of Management and Budget (OMB) on "Improving the Accessibility of Government Information". Section 508 of the Rehabilitation Act (29 U.S.C. 794d) requires Federal agencies to buy and use electronic and information technology (EIT) that is accessible. The July memo directs agencies to take stronger steps toward improving the acquisition and implementation of accessible technology. In order to better understand the needs of diverse communities and provide better solutions, the Federal Chief Information Officers Council (CIOC), in collaboration with the Chief Acquisition Officers Council, the GSA Office of Governmentwide Policy and the U.S. Access Board, has held several in a series of listening sessions to engage citizens and employees in expressing concerns and proposing ideas. The next listening session will be at Stanford University 450 Serra Mall, Stanford, CA 94305 and will include time for generating a dialogue with technology companies. It will also include time for general comments from the public. Representatives from technology companies, persons with disabilities, their advocates, and government employees are invited to participate.

DATES: *Listening Session:* Friday, June 17, 2011, from 1:30 p.m. to 5 p.m. Pacific Time (PT).

Persons wishing to speak at the listening session can pre-register by contacting Emily Koo at (410) 965–4472 or *Innovate.Accessibility@ssa.gov.* Pre-registrants will have priority to speak during the session. Registration will also be available in person at Stanford University on the afternoon of the listening session.

ADDRESSES: *Meeting Location:* Hewlett Teaching Center, room Hewlett 200, 370 Serra Mall, Stanford CA 94305.

Accommodations: The listening session will have sign language interpreters; real time captioning services, assistive listening devices and microphones. Materials will be available in Braille, large print and electronic formats. The meeting location is wheelchair accessible. Anyone needing other accommodations should include a specific request when registering at least three (3) days in advance.

FOR FURTHER INFORMATION CONTACT: *mailto:* Emily Koo at (410) 965–4472 or *Innovate.Accessibility@ssa.gov.*

SUPPLEMENTARY INFORMATION: In 1998, Congress amended the Rehabilitation Act of 1973 to require Federal agencies to make their EIT accessible to people with disabilities. Inaccessible technology interferes with an ability to obtain and use information quickly and easily. Section 508 was enacted to eliminate barriers in information technology, open new opportunities for people with disabilities, and encourage development of technologies that will help achieve these goals. The law applies to all Federal agencies when they develop, procure, maintain, or use electronic and information technology. Under Section 508 (29 U.S.C. 794d), agencies must give employees with disabilities and members of the public with disabilities access to information that is comparable to access available to others without disabilities.

Effective implementation of Section 508 is an essential element of President Obama's principles of open government, requiring that all government and data be accessible to all citizens. In order for the goal of open government to be meaningful for persons with disabilities, technology must also be accessible, including digital content. In July 2010, the OMB took steps to assure that the Federal government's progress in implementing Section 508 is stronger and achieves results more quickly.

Section 508 requires the General Services Administration (GSA) to provide technical assistance to agencies on Section 508 implementation. GSA has created a number of tools, available at *http://www.Section508.gov,* to help agencies develop accessible requirements, test the acceptance

process, and share lessons learned and best practices. *For example:*

• The BuyAccessible Wizard, *http://www.buyaccessible.gov,* helps build compliant requirements and solicitations;

• The Quick Links site, *https://app.buyaccessible.gov/baw/KwikLinksMain.jsp*, provides pre-packaged Section 508 solicitation documents;

• The BuyAccessible Products and Services Directory, *https://app.buyaccessible.gov/DataCenter/* provides a registry of companies and accessibility information about their offerings; and

• The Accessibility Forum 2.0 blog *http://buyaccessible.net/blog/* provides a venue where stakeholders may share ideas and success stories, or engage in conversations on improving accessibility.

The OMB has directed that several actions be taken to improve Section 508 performance:

• By Mid-January 2011, OMB required the GSA Office of Government-wide Policy (OGP) to provide updated guidance on making government EIT accessible. This guidance built upon existing resources to address challenges, increase oversight, and reduce costs associated with acquiring and managing EIT solutions that are not accessible.

• By Mid-January 2011, OMB required the GSA OGP to update its general Section 508 training to offer refreshed continuous learning modules that can be used by contracting officers, program/project managers (especially those managing EIT programs), and contracting officer technical representatives (COTRs) as they fulfill their Federal Acquisition Certification requirements.

• In March 2011, the GSA OGP and the Department of Justice (DOJ) issued a survey to allow agencies to assess their implementation of Section 508, including accessibility of websites and other technology used by the agencies. DOJ will use this information in preparing its next assessment of agency compliance as required by the Rehabilitation Act. The CIOC Accessibility Committee will also use this information to identify best practices and lessons learned.

• In the spring of 2011, the DOJ will issue a progress report on Federal agency compliance with Section 508, the first since 2004. Going forward, DOJ will meet its obligation to issue a report biennially.

• Beginning in FY 2011, the GSA OGP began providing OMB a quarterly summary report containing results of Section 508 reviews of a sample of solicitations posted on FedBizOpps.gov. GSA will provide the agencies a summary of the sampling results to facilitate sharing of best practices and successes, and to address common challenges.

This listening session will focus on what other steps the Federal government can take to increase the accessibility and usability of government information and data for persons with disabilities.

Specific input from private industry is sought for the following questions:

• How can the Federal government attract wider support from the greater information technology (IT) community in accessibility and assistive technology (AT)?

• What is private industry doing to implement IT accessibility that the Federal government should follow?

• From the perspective of vendors, how can implementation of Section 508 be improved?

• What could the Federal government ask for that would allow vendors to better show that their products meet accessibility needs?

• What support do newly emerging technology companies need to build in accessibility in the product and service offerings?

General input is sought on the following questions:

• What can the Federal government do to use technology better or in new ways?

• What can the Federal government do to make technology more accessible?

• What emerging technologies does the Federal government use that you cannot?

• What technologies should the Federal government use that would enhance your interactions with the Federal government?

• What are state and local governments doing to implement information technology IT accessibility that the Federal government should follow?

• What is academia doing to implement IT accessibility that the Federal government should follow?

• What can the Federal government do to influence technology accessibility?

• What can the Federal government do to support the availability of effective Communities of Practice on IT accessibility?

• Do you believe the IT industry would benefit from a professional certification or credential that denotes a company's expertise in accessibility? How could that be implemented and managed, and should the government play a role in making that happen?

Feedback from the listening session will be used by, and shared across, agencies to improve accessibility and usability.

Karen Palm,

Associate Chief Information Officer.

[FR Doc. 2011–12642 Filed 5–23–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7478]

Culturally Significant Object Imported for Exhibition; Determinations: "Portrait of a Man"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the object to be included in the exhibition "Portrait of a Man", imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Metropolitan Museum of Art, New York, New York, from on or about June 1, 2011, until on or about December 31, 2016, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Kevin M. Gleeson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 632–6473). The mailing address is U.S. Department of State, SA–5, Suite 5H03, 2200 C Street, NW., Washington, DC 20522–0505.

Dated: *May 18, 2011.*

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–12806 Filed 5–23–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice Number 7406]

Overseas Schools Advisory Council Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold

its Annual Meeting on Thursday, June 30, 2011, at 9:30 a.m. in Conference Room 1107, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public and will last until approximately 12 p.m.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas that are assisted by the Department of State and attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes a review of the projects selected for the 2009 and 2010 Educational Assistance Program, a presentation on current education issues in the United States and their impact on American-sponsored overseas schools, and a presentation on the Principals Training Center, which provides continuing education for administrators of American-sponsored overseas schools.

Members of the public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, prior to June 20, 2011. Each visitor will be asked to provide his/her date of birth and either driver's license or passport number at the time of registration and attendance, and must carry a valid photo ID to the meeting.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (U.S.A. 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 Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

Any requests for reasonable accommodation should be made at the time of registration. All such requests will be considered; however, requests made after June 20th might not be possible to fill. All attendees must use the C Street entrance to the building.

Dated: May 16, 2011.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 2011–12813 Filed 5–23–11; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 7477]

Notice of Meeting of the Advisory Committee on International Law

A meeting of the Advisory Committee on International Law will take place on Monday, June 6, 2011, from 9:30 a.m. to approximately 5:30 p.m., at the George Washington University Law School (Michael K. Young Faculty Conference Center, 5th Floor), 2000 H St., NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, Harold Hongju Koh, and will be open to the public up to the capacity of the meeting room. It is anticipated that the agenda of the meeting will cover a range of current international legal topics, including legal responses to recent developments in the Middle East, including diplomacy, economic responses and the use of force; international accountability mechanisms; the Arctic region and the Law of the Sea Convention; and national security in the digital age.

Members of the public who wish to attend the session should, by Friday, May 27, 2011, notify the Office of the Legal Adviser (*telephone:* 202–776–8323, *e-mail*: *AndersonSR@state.gov*) of their name, professional affiliation, address, and telephone number.

A valid photo ID is required for admittance. A member of the public who needs reasonable accommodation should make his or her request by May 27, 2011. Requests made after that time will be considered but might not be possible to accommodate.

Dated: May 18, 2011.

Scott R. Anderson,

Executive Director, Office of International Claims and Investment Disputes, Office of the Legal Adviser, Advisory Committee on International Law, U.S. Department of State.

[FR Doc. 2011–12811 Filed 5–23–11; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 7404]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct four separate open meetings to prepare for upcoming events at the International Maritime Organization (IMO) in London, United Kingdom. The first of these open meetings will be held at 9:30 a.m. on Tuesday, June 14, 2011, in Room 1200 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the sixty first Session of the IMO Technical Cooperation Committee (TC 61) to be held from June 21 to June 23, 2011.

The primary matters to be considered at TC 61 include:

—Adoption of the agenda.
—Work of other bodies and organizations.
—Integrated Technical Co-operation Programme.
—Financing the Integrated Technical Co-operation Programme.
—Linkage between the Integrated Technical Co-operation Programme and the Millennium Development Goals.
—Partnerships for progress.
—Voluntary IMO Member State Audit Scheme.
—Programme on the integration of women in the maritime sector.
—Global maritime training institutions.
—Report on the planned outputs of the Committee for 2010–2011.
—Impact Assessment Exercise 2008–2011.
—Revision of the Guidelines on Methods and Organization of Work of the Technical Co-operation Committee.
—Work Programme.
—Any other business.
—Election of the Chairman and Vice-Chairman for 2012.
—Consideration of the report of the Committee on its sixty-first session.

The second open meeting will be held at 9:30 a.m. on Tuesday, also on June 14, 2011, in Room 1202 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–7126. The primary purpose of this meeting is to prepare for the one hundred and sixth Session of the IMO Council (C 106) to be held from June 27 to July 1, 2011.

The primary matters to be considered at C 106 include:

—Adoption of the agenda.

—Report of the Secretary-General on credentials.
—Strategy and planning.
—Organizational reforms.
—Resource management.
—Technical Co-operation Fund—biennial allocation to support the ITCP Programme for 2012–2013.
—Results-based budget.
—Voluntary IMO Member State Audit Scheme.
—Consideration of the reports of the Maritime Safety Committee.
—Consideration of the reports of the Technical Co-operation Committee.
—Protection of vital shipping lanes.
—World Maritime University.
—IMO International Maritime Law Institute.
—Assembly Matters.
—External Relations.
—Report on the status of the Convention and membership of the Organization.
—Report on the status of conventions and other multilateral instruments in respect of which the Organization performs functions.
—Appointment of the Secretary-General.
—Appreciation of the services to the Organization of Mr. E.E. Mitropoulos.
—Place and date of the next session of the Council.
—Supplementary agenda items.

The third open meeting will be held at 9:30 a.m. on Wednesday July 6th, 2011, in Room 2501 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of this meeting is to prepare for the sixty-second Session of the IMO Maritime Environment Protection Committee (MEPC 62) to be held from July 11 to July 15, 2011.

The primary matters to be considered at MEPC 62 include:

—Adoption of the agenda.
—Harmful aquatic organisms in ballast water.
—Recycling of ships.
—Prevention of air pollution from ships.
—Reduction of GHG emissions from ships.
—Consideration and adoption of amendments to mandatory instruments.
—Interpretations of, and amendments to, MARPOL and related instruments.
—Implementation of the OPRC Convention and the OPRC–HNS Protocol and relevant Conference resolutions.
—Identification and protection of Special Areas and Particularly Sensitive Sea Areas.
—Inadequacy of reception facilities.
—Reports of sub-committees.
—Work of other bodies.
—Status of conventions.
—Harmful anti-fouling systems for ships.
—Promotion of implementation and enforcement of MARPOL and related instruments.
—Technical Co-operation Sub-programme for the Protection of the Marine Environment.
—Role of the human element.
—Formal safety assessment.
—Noise from commercial shipping and its adverse impacts on marine life.
—Work programme of the Committee and subsidiary bodies.
—Application of the Committees' Guidelines.
—Election of the Chairman and Vice Chairman for 2012.
—Any other business.
—Consideration of the report of the Committee.

The fourth open meeting will be held at 10 a.m. on Thursday July 7, 2011, at the offices of the Radio Technical Commission for Maritime Services (RTCM), 1800 N. Kent Street, Suite 1060, Arlington, Va. 22209. The primary purpose of this meeting is to prepare for the fifty-fifth Session of the International Maritime Organization's (IMO) Fire Protection Sub-Committee (FP 55) to be held from July 25 to July 29, 2011.

The primary matters to be considered at FP 55 include:

—Performance testing & approval standards for fire safety systems.
—Requirements for ships carrying hydrogen and compressed natural gas vehicles.
—Fire resistance of ventilation ducts.
—Measures to prevent explosions on oil and chemical tankers transporting low flash point cargoes.
—Recommendation on evacuation analysis for new and existing passenger ships.
—Consideration of IACS unified interpretations.
—Harmonization of the requirements for the location of entrances, air inlets and openings in the superstructure of tankers.
—Means of escape from machinery spaces.
—Review of fire protection requirements for on-deck cargoes.
—Analysis of fire casualty records.
—Revision of the Recommendations for entering enclosed spaces aboard ships.
—Guidelines for a visible element to general emergency alarm systems on passenger ships.
—Means for recharging air bottles for air breathing apparatuses.
—Safety provisions applicable to tenders operating from passenger ships.
—Development of unified interpretations for chapter 7 of the 2000 HSC Code.
—Development of amendments to the FSS Code for communication equipment for fire-fighting teams.
—Development of guidelines for use of fibre reinforced plastic within ships structures.
—Any other business.

Members of the public may attend the four meetings up to the seating capacity of the rooms. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend one or all of the four meetings should contact the following coordinators at least 7 days prior to the meetings:

—For the TC 61 meeting on June 14, contact LCDR Jason Smith, by e-mail at *jason.e.smith2@uscg.mil,* by phone at (202) 372–1376, by fax at (202) 372–1925, or in writing at Commandant (CG–52), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126 not later than June 7, 2011, 7 days prior to the meeting. Requests made after June 7, 2011 might not be able to be accommodated.
—For the C 106 meeting also on June 14, contact LTJG Kirsten Ambors, by e-mail at *imo@uscg.mil,* by phone at (202) 372–1417, by fax at (202) 372–1925, or in writing at Commandant (CG–52), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126 not later than June 7, 2010, 7 days prior to the meeting. Requests made after June 7 might not be able to be accommodated.
—For the MEPC 62 meeting on July 6, contact Mr. John Meehan, by e-mail at *John.A.Meehan@uscg.mil,* by phone at (202) 372–1429, by fax at (202) 372–1925, or in writing at Commandant (CG–52), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126 not later than June 28, 2011, 7 days prior to the meeting. Requests made after June 28, 2011 might not be able to be accommodated.
—For the FP 55 meeting on July 7, contact Mr. Randall Eberly, by e-mail at *randall.eberly@uscg.mil,* by phone at (202) 372–1393, by fax at (202) 372–1925, or in writing at Commandant (CG–5214), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126 not later than June 30, 2011, 7 days prior to the meeting.

Please note that due to security considerations at Coast Guard Headquarters in Washington, DC, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited.

RTCM Headquarters is adjacent to the Rosslyn Metro station. For further directions and lodging information, *please see: http://www.rtcm.org/visit.php.* Access to RTCM in Arlington, VA does not require the production of government issued photo identification.

Additional information regarding this and other IMO SHC public meetings may be found at: http://www.uscg.mil/imo.

Dated: *May 18, 2011.*

Jon Trent Warner,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2011–12808 Filed 5–23–11; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Civil Supersonic Aircraft Panel Discussion

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting participation.

SUMMARY: This notice advises interested persons that the FAA is conducting its fourth public meeting on civil supersonic aircraft research. The public meeting will include presentations on current research programs and a question and answer session for attendees. The purpose of the meeting is to raise public awareness of the continuing technological advancements in supersonic aircraft technology aimed at reducing the intensity of sonic boom.

DATES: The public meeting will be held on Thursday, July 14, 2011, in Washington, DC from 1 p.m. to 3 p.m. Attendees are encouraged to either come early or stay later to visit the Gulfstream Aerospace Corporation (Gulfstream) Supersonic Acoustic Signature Simulator (SASSII) that will be outside of the Department of Transportation (DOT) building.

Meeting registration is required by June 23; there is no registration fee. All participants are requested to register at the following Web site: *https://spreadsheets.google.com/spreadsheet/viewform?formkey=dEFEdlRnYzBiaHZtTUozTHVtbkF4d0E6M.Q*

ADDRESSES: The public meeting will be held at the DOT Headquarters building, 1200 New Jersey Ave., SE., Washington, DC 20590, Conference Room Oklahoma A–C. The DOT building is located across the street from the Navy Yard Metro stop on the Green Line. Attendance is open to all interested parties; however, for building security requirements, please register by June 23 (see above for information on registration).

FOR FURTHER INFORMATION CONTACT: Laurette Fisher, Office of Environment and Energy (AEE–100), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; e-mail *laurette.fisher@faa.gov,* facsimile (202) 267–5594, telephone (202) 267–3561 and Sandy Liu, Office of Environment and Energy (AEE–100), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; e-mail *sandy.liu@faa.gov,* facsimile (202) 267–5594, telephone (202) 493–4864.

Background: Since March 1973, supersonic flight over land by civil aircraft has been prohibited in the United States. The Concorde was the only civil supersonic airplane that offered service to the United States, but that airplane is no longer in service.

The interest in supersonic aircraft technology has not disappeared. Current research is dedicated toward reducing the impact of sonic booms as they reach the ground, in an effort to make overland flight acceptable. Recent research has produced promising results for low boom intensity, and has renewed interest in developing supersonic civil aircraft that could be considered environmentally acceptable for supersonic flight over land.

The FAA has held three previous public meetings. The first meeting was held in Chicago, IL on Friday, October 24, 2008, as part of the O'Hare Noise Compatibility Commission Symposium. The second meeting was held in Palm Springs, CA on Sunday, March 1, 2009, as part of the Annual University of California Symposium on Aviation Noise and Air Quality. And, the third meeting took place on Wednesday, April 21, 2010, as part of the joint meeting of the 159th Acoustical Society of America and NOISE–CON 2010 in Baltimore, Maryland 21202.

The purpose of these meetings is to raise public awareness on advances in supersonic technology, and for the FAA, the National Aeronautics and Space Administration (NASA), and industry to get feedback from interested persons.

Highlighting the effort to raise awareness, Gulfstream has supported the FAA's public meetings by making its Supersonic Acoustic Signature Simulator II (SASSII) available for attendees to visit. The SASSII is a mobile audio booth designed and equipped to demonstrate the "Gulfstream Whisper", the aerospace company's latest effort to provide a solution to the traditional sonic boom.

A supersonic aircraft such as the Concorde in cruise produces a traditional jagged "N-wave" sonic boom pressure wave, resulting in a loud, jarring double boom on the ground as it passes by. Gulfstream's patented spike for controlling and reducing sonic boom transforms the traditional N-wave sonic boom into a smooth and more rounded pressure wave shaped roughly like a sine wave or a sideways "S". This change in the wave shape results in a softer sound that is quieter than the Concord sonic boom by a factor of 10,000. Gulfstream developed the mobile SASSII so others could experience this dramatic sound difference. The simulator enables visitors to sense for themselves the dramatic difference in sound, reverberation, and intensity. Using a sophisticated, computer-based audio system, the acoustic engineer sends the audio feed into a sound booth where visitors can compare various sound signatures.

Public involvement is essential in any future definition of an acceptable new standard that would allow supersonic flights over land. We anticipate that this will be one of many meetings informing the public on the continual developments in the research of shaped sonic booms and other technical and environmental challenges that need to be addressed in developing a new supersonic airplane.

Issued in Washington, DC, on May 18, 2011.

Lourdes Q. Maurice,

Executive Director, Office of Environment and Energy.

[FR Doc. 2011–12742 Filed 5–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–24]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petitions or their final disposition.

DATES: Comments on these petitions must identify the petition docket number involved and must be received on or before June 13, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–0370 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility 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.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility 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: Tyneka L. Thomas, 202–267–7626, or Keira Jones, 202–267–4025, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 18, 2011.

Dennis Pratte,

Acting Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2011–0370.
Petitioner: Chrysler Aviation, Inc.
Section of 14 CFR Affected: § 135.267(c).
Description of Relief Sought: Chrysler Aviation, Inc. (Chrysler Aviation), requests an exemption from § 135.267(c) to allow Chrysler to extend the duty limit from 14 hours to 16 hours in the event of a bona fide medical emergency.

[FR Doc. 2011–12745 Filed 5–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation Safety Approval Performance Criteria

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notification of criteria used to evaluate the Zero Gravity Corporation (Zero Gravity) safety approval application.

SUMMARY: The FAA issued Zero Gravity a safety approval, subject to the provisions of Title 51 U.S.C Subtitle V, ch. 509, and the orders, rules and regulations issued under it. Pursuant to 14 CFR 414.35, this Notice publishes the criteria that were used to evaluate the safety approval application.

Background: Zero Gravity applied for, and received, a safety approval for its capability to provide a reduced gravity environment using a Boeing 727 aircraft. The performance criteria for this safety approval are applicant developed per 14 CFR 414.19 (a)(4). Zero Gravity is capable of replicating three reduced gravity levels associated with suborbital space flight. *The reduced gravity levels are:*

—0.00 g ± 0.05 g for 17 continuous seconds.
—0.16 g ± 0.05 g for 20 continuous seconds.
—0.38 g ± 0.05 g for 20 continuous seconds.

Criteria Used To Evaluate Safety Approval Application: The reduced gravity environment provided by Zero Gravity was evaluated by the FAA as a component of a flight crew qualification and training process. The evaluation included the FAA's assessment of Zero Gravity's ability to accurately replicate the specified reduced gravity levels.

Zero-G submitted the following data to show how they were in compliance with the criteria:

—Parabolic Aircraft Acceleration Measurement System (PAAMS) power and calibration procedures,
—Parabolic Aircraft Acceleration Flight Data, and
—Gravity Level Reports.

FOR FURTHER INFORMATION CONTACT: For questions about the performance criteria, you may contact Randy Maday, Licensing and Evaluation Division (AST–200), FAA Office of Commercial Space Transportation (AST), 800 Independence Avenue, SW., Room 331, Washington, DC 20591, telephone (202) 267–8652; e-mail randal.maday@faa.gov.

Issued in Washington, DC, on May 17, 2011.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2011–12732 Filed 5–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28043]

Hours of Service (HOS) of Drivers; Application of American Pyrotechnics Association (APA) for Exemption From the 14-Hour Rule During Independence Day Celebrations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The American Pyrotechnics Association (APA) has applied for a limited exemption from FMCSA's regulation that drivers of commercial motor vehicles (CMVs) may not drive after the 14th hour after coming on duty. The exemption would apply solely to the operation of CMVs by 9 designated APA-member motor carriers in conjunction with staging fireworks shows celebrating Independence Day during the periods June 28—July 8, 2011, and June 28—July 8, 2012, inclusive. During these two periods, the approximately 375 CMVs and drivers employed by these 9 APA-member motor carriers would be allowed to exclude off-duty and sleeper-berth time

of any length from the calculation of the 14 hours. These drivers would not be allowed to drive after accumulating a total of 14 hours of on-duty time, following 10 consecutive hours off duty, and would continue to be subject to the 11-hour driving time limit, and the 60- and 70-hour on-duty limits. The APA maintains that the terms and conditions of the limited exemption would ensure a level of safety equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: Comments must be received on or before June 14, 2011. This exemption would be effective during the periods of June 28, 2011, through July 8, 2011, inclusive, and June 28, 2012, through July 8, 2012, inclusive. The exemption would expire on July 9, 2012.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2007–28043 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* In the ENTER KEYWORD OR ID box enter FMCSA–2007–28043 and click on the tab labeled SEARCH. On the ensuing page, click on any tab labeled SUBMIT A COMMENT on the extreme right of the page and a page should open that is titled "Submit a Comment." You may identify yourself under section 1, ENTER INFORMATION or you may skip section 1 and remain anonymous. You enter your comments in section 2, TYPE COMMENT & UPLOAD FILE. When you are ready to submit your comments, click on the tab labeled SUBMIT. Your comment is then submitted to the docket; and you will receive a tracking number.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the **ADDRESSES** heading above and the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please also see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time, and in the ENTER KEYWORD OR ID box enter FMCSA–2007–28043 and click on the tab labeled SEARCH.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on January, 17, 2008 (73 FR 3316) or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Public Participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the "help" section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Hydock, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Telephone: 202–366–4325. E-mail: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide FMCSA authority to grant exemptions from its motor carrier safety regulations, including the hours-of-service (HOS) rules. The procedure for requesting an exemption is prescribed in 49 CFR part 381. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted, and to comment on the request. The Agency may grant an exemption for up to 2 years.

The Agency reviews the safety analyses and public comments and may grant the exemption if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption" (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for denying the exemption or, in the alternative, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which the exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption.

APA Application for Exemption

The HOS rules in 49 CFR 395.3(a)(2) prohibit a property-carrying CMV driver from driving after the 14th hour after coming on duty following 10 consecutive hours off duty. APA, a trade association representing the domestic fireworks industry, has applied for an exemption from this subsection for 9 of its member motor carriers. A copy of the application is included in the docket referenced at the beginning of this notice. A list of the 9 APA motor carriers within the scope of this exemption request is included as an appendix to this notice.

APA has also applied for renewal of the exemption granted in 2009 (74 FR 29264, June 19, 2009). The renewal would cover 54 of the 61 member motor carriers listed in the 2009 exemption notice. Information regarding that request will be published in a separate **Federal Register** notice.

The initial APA exemption application for relief from the 14-hour rule was submitted in 2004; a copy of the application is in the docket. That application fully describes the nature of the pyrotechnic operations of the CMV drivers employed by APA-member motor carriers during a typical Independence Day period. The CMV drivers are trained pyro-technicians holding a commercial driver's license (CDL) with a hazardous materials (HM) endorsement. They transport fireworks and related equipment by CMV on a very demanding schedule, often to remote locations. After they arrive, the APA driver is responsible for set-up and staging of the fireworks shows.

In 2009, FMCSA granted this same limited exemption to 14 new APA-member motor carriers (74 FR 29266, June 10, 2009) and renewed 61 exemptions of APA-member motor carriers (74 FR 29264, June 19, 2009) for their CMV transportation of fireworks for Independence Day displays in 2009 and 2010. The Agency is not aware of any adverse safety events related to APA operations during these periods. APA has now applied for the same limited

exemption for 9 additional motor carriers.

APA is seeking this exemption because compliance with the current 14-hour rule by its members during these two 11-day periods would impose a substantial economic hardship on numerous cities, towns and municipalities, as well as the APA companies. To meet the demand for fireworks under the current HOS rules, APA asserts that its member companies would be required to hire a second driver for most trips. The result would be a substantial increase in the cost of the fireworks shows—beyond the means of many of APA's customers—and would deny many Americans this important component of their Independence Day celebration.

Method To Ensure an Equivalent or Greater Level of Safety

APA believes that this exemption would not adversely affect the safety of the motor carrier transportation provided by its members during the two 11-day periods. According to the APA, the companies that have operated under the exemption, and subsequent renewals, for the past six years have done so with no reports of incidents of any kind. As a condition of holding the exemption, each motor carrier is required to notify FMCSA within 5 business days of any accident (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while under this exemption. To date, FMCSA has received no incident notifications.

In addition, the exemption will enhance safety by decreasing the number of CMVs stationed with 1.1G, 1.3G and 1.4G fireworks aboard at locations throughout the country. Under the exemption, drivers will be able to safely return the CMVs to their home base, next display location or proper storage facility, which are all properly secured areas for 1.1G, 1.3G and 1.4G fireworks as required by the Bureau of Alcohol, Tobacco, Firearms and Explosives, and state and local regulations. APA states that the operational demands of this unique industry minimize the risk of a CMV crash. During the exemption period, these drivers transport fireworks over relatively short routes from distribution points to the site of the fireworks display, and normally do so in the early morning when traffic is light. At the site, they spend considerable time installing, wiring, and safety-checking the fireworks displays, followed by a period of several hours off duty in the late afternoon and early evening prior to the event. During this time, the CMV drivers are able to rest and nap, thereby reducing or eliminating the fatigue accumulated during the day. After the event, they drive the CMVs to the point of origin. This occurs late in the evening, and thus avoids heavy traffic. Before beginning another duty day, these drivers must take 10 consecutive hours off duty which is the same requirement imposed on other CMV drivers.

APA also argues that the heavy training requirements imposed on their CMV drivers add to the level of safety achieved. These drivers are comprehensively trained on proper handling and use of these products, and receive the training and qualifications required by the Department of Transportation. Each driver goes through an extensive training and apprentice program for up to two years before transporting and operating a fireworks display. In addition, all companies requesting the exemption have agreed to provide to their drivers operating under the exemption additional training on the importance of proper rest periods during the work day, including naps and breaks by other means.

APA believes that these operations, conducted under the terms and conditions of this limited exemption, would provide a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

Terms and Conditions of the Exemption

Period of the Exemption

APA's request for exemption from the requirements of 49 CFR 395.3(a)(2) would be effective June 28 through July 8, 2011, inclusive, and from June 28 through July 8, 2012, inclusive. The requested exemption would expire on July 9, 2012.

Extent of the Exemption

This exemption would be restricted to drivers employed by the 9 companies, firms and entities listed in the appendix to this notice. The drivers would be entitled to a limited exemption from the requirements of 49 CFR 395.3(a)(2), which prohibits a driver from driving after the 14th hour after coming on duty and does not permit off-duty periods to extend the 14-hour limit. Drivers covered by this exemption would be able to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. This exemption would be contingent on each driver driving no more than 11 hours in a 14-hour on-duty period. The exemption would further be contingent on each driver having 10 consecutive hours off duty following 14 hours on duty prior to beginning a new driving period. The drivers must comply with all other requirements of the Federal Motor Carrier Safety Regulations) (49 CFR parts 350–399).

Preemption

During the periods the exemption would be in effect, no State would be permitted to enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person or entity operating under the exemption.

Notification to FMCSA

Each company, firm and entity listed in the appendix to this notice would be required to notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while under this exemption. The notification must include the following information:

a. Date of the accident,

b. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,

c. Driver's name and driver's license number,

d. Vehicle number and State license number,

e. Number of individuals suffering physical injury,

f. Number of fatalities,

g. The police-reported cause of the accident,

h. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and

i. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

Termination

During the exemption periods, FMCSA would retain the authority to take all steps necessary to protect the public interest, including revocation of the exemption. Exempt motor carriers and drivers would be subject to FMCSA monitoring while operating under this exemption. FMCSA would immediately revoke the exemption for failure to comply with its terms and conditions.

Request for Comments

Although FMCSA previously requested public comment on the safety impact of similar APA requests [*i.e.,* for a limited exemption from the requirements of 49 CFR 395.3(a)(2) for the 2005–2006, 2007–2008, 2009–2010 Independence Day celebrations and in a notice published on March 25, 2011 (76 FR 16852)], the Agency is required by 49 U.S.C. 31315(b)(4) and 31136(e) to request public comment on all applications for exemption.

Due to the fact that this exemption application is specific to the Independence Day celebrations, FMCSA must obtain, and complete its review of, comments in time to issue a final determination before the 4th of July holiday. This is not to say that the Agency has prejudged the outcome of this process, but approval of the application is one possible result. Granting the exemption after the long holiday weekend would reduce its value considerably. FMCSA is therefore adopting a comment period of 21 days instead of the 30 days normally provided. We do not believe this imposes any particular hardship on potential commenters, since this application involves the same issues as those raised by similar exemption applications submitted by the pyrotechnic industry in previous years. Commenters who have an interest in such matters are likely to be familiar with the issues and arguments surrounding a fireworks exemption, and will be able to formulate their responses within a 21-day comment period.

Therefore FMCSA, in accordance with 49 U.S.C. 31315(b)(4) and 31136(e), requests public comments on APA's recent request for exemption from the 14-hour rule for the 9 motor carriers listed in the appendix to this notice. FMCSA will consider all comments received by close of business on June 14, 2011. All comments will be available for examination in the docket listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: May 19, 2011.

Pamela M. Pelcovits,

Director, Office of Policy Plan and Regulations.

APPENDIX TO THE NOTICE OF APPLICATION OF AMERICAN PYROTECHNICS ASSOCIATION (APA) FOR A LIMITED HOS EXEMPTION FOR 9 MOTOR CARRIERS DURING THE 2011 AND 2012 INDEPENDENCE DAY CELEBRATIONS

Motor Carrier	Address	DOT No.
1. AM Pyrotechnics, LLC	2429 East 535th Rd., Buffalo, MO 65622	1034961
2. Arthur Rozzi Pyrotechnics	6607 Red Hawk Ct., Maineville, OH 45039	2008107
3. East Coast Pyrotechnics, Inc	4652 Catawba River Rd., Catawba, SC 29704	545033
4. Fireworks Extravaganza	58 Maple Lane, Otisville, NY 10963	2064141
5. Hi-Tech FX, LLC	1135 Ave. I, Fort Madison, IA 52627	1549055
6. North Central Industries, Inc	1500 E. Washington, Muncie, IN 47305	00165755
7. Pyro Spectaculars North, Inc	5301 Lang Avenue, McClellan, CA 95652	1671438
8. Pyrotechnic Display, Inc	8450 W. St. Francis Rd., Frankfort, IL 60423	1929883
9. Western Display Fireworks, Ltd	10946 S. New Era Rd., Canby, OR 97013	498941

[FR Doc. 2011–12760 Filed 5–23–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011–0060]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ARIEL.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0060 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 23, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0060. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ARIEL is:

Intended Commercial Use of Vessel: "The vessel will be used pursuant to a contract with a California based corporation that will use the boat for marketing purposes. There also will be six pack charters."

Geographic Region: "California."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: May 17, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–12692 Filed 5–23–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011–0058]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CÉNOU.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0058 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 23, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0058. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CÉNOU is:

Intended Commercial Use of Vessel: "The first use of this boat would be charter in the Chesapeake Bay and between New York City and Boston. The program would focus on French and Spanish speaking clients by advertising and selling the charter operator as fluent in those languages. It would advertise in foreign countries in the media that is directed at foreigners. The charter operation would be run between New York to Boston with an emphasis of the area south of Cape Cod and for a two to three week period in the Chesapeake Bay. The second use of this boat would be to operate two to three weeks (one week per charter) as a team building/sailing school for teenagers. This would be the only sailing school to offer teenagers the possibility of learning how to handle a 46' catamaran in one week, using team building techniques developed for corporate programs."

Geographic Region: "Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administration.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–12693 Filed 5–23–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011–0061]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BELLISSIMA.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0061 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 23, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0061. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version

of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BELLISSIMA is:

Intended Commercial Use of Vessel: "Carrying 12 passengers for recreational purposes."

Geographic Region: "Florida, California, Oregon, Washington."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: May 17, 2011.

Christine Gurland,

Secretary, Maritime Secretary.

[FR Doc. 2011–12691 Filed 5–23–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011–0054]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CONDESA.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0054 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 23, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0054. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CONDESA is:

Intended Commercial Use of Vessel: "sailing charters."

Geographic Region: "California, Oregon, Washington."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: May 17, 2011.

Christine Gurland,

Secretary, Maritime Administrator.

[FR Doc. 2011–12695 Filed 5–23–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011 0057]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel KAINANI.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0057 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S.-vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 23, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011 0057. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West

Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel KAINANI is:

Intended Commercial Use of Vessel: "The Vessel will be used for charter targeting groups of people in their mid twenties to late thirties. I am hoping that the vessel will be chartered per stateroom."

Geographic Region: "Alaska, California, Washington, Oregon, Hawaii, Florida, Puerto Rico."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: May 17, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–12697 Filed 5–23–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2011–0018]

Reports, Forms, and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation, (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period was published on February 11, 2011 (76 FR 7897–7898).

DATES: Comments must be submitted on or before June 23, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Flaherty, Program Analyst, Office of Emergency Medical Services, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NTI–140, W44–322, Washington, DC 20590, (202) 366–2705 or via e-mail at *laurie.flaherty@dot.gov.*

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: National 9–1–1 Profile Database as part of the National 9–1–1 Program.

OMB Number: 2127 New.

Type of Request: New information collection Requirement.

Abstract: NHTSA is proposing to collect and aggregate information from state level reporting entities that can be used to measure the progress of 9–1–1 authorities across the country in enhancing their existing operations and migrating to more advanced—Internet-Protocol-enabled emergency networks. The data will be maintained in a "National 9–1–1 Profile Database." One of the objectives of the National 9–1–1 Program is to develop, collect, and disseminate information concerning practices, procedures, and technology used in the implementation of E9–1–1 services and to support 9–1–1 Public Safety Answering Points (PSAPs) and related state and local public safety agencies for 9–1–1 deployment and operations. The National 9–1–1 profile database can be used to follow the progress of 9–1–1 authorities in enhancing their existing systems and implementing next-generation networks for more advanced systems.

The goal of the data collection process is to support a national 9–1–1 profile that will be used to help accurately measure and depict the current status and planned capabilities of 9–1–1 systems across the United States. Evaluations, based upon the data collected, will help draw attention to key roadblocks and solutions in the deployment process and to target possible future activities and resources consistent with the goals of the program. The information in aggregated form will be available to state and local stakeholders in the public safety community.

Affected Public: Under this proposed effort, NHTSA would specifically request reporting entities to voluntarily collect and annually report the data described above utilizing the described web-based data collection tool. Reporting entities are state level 9–1–1 program officials, and the data reported will reflect state-level aggregated data. Where a state statute has not established a state-level 9–1–1 program, the authorized entity is the state E9–1–1 Coordinator designated under 47 U.S.C. 942(b)(3)(A)(ii).

The total number of respondents is identified at fifty-six (56), including the fifty states and the six U.S. Territories of Guam, U.S. Minor Outlying Islands, American Samoa, Mariana Islands, U.S. Virgin Islands, and Puerto Rico.

Estimated Total Annual Burden: NHTSA estimates that the time required to annually report the data described utilizing the web-based tool will be three hours (2 hours of preparation, 1 hour of entry to Web site) per reporting entity, for a total of 168 hours for all entities.

The respondents would not incur any reporting costs from the information collection beyond the time it takes to gather the information, prepare it for reporting and then populate the web-based data collection tool. The respondents also would not incur any recordkeeping burden or recordkeeping costs from the information collection.

Send comments within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if

OMB receives it within 30 days of publication.

Jeffrey P. Michael,

Associate Administrator for Research and Program Development.

[FR Doc. 2011–12757 Filed 5–23–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0095; Notice 2]

Volkswagen Group of America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Volkswagen Group of America, Inc. (Volkswagen),[1] has determined that certain 2009 Model Year (MY) passenger cars and multipurpose passenger vehicles (MPV) equipped with indirect Tire Pressure Monitoring Systems (TPMS), do not fully comply with paragraph S4.4 of Federal Motor Vehicle Safety Standard (FMVSS) No. 138, *Tire Pressure Monitoring Systems.* Specifically, Volkswagen estimated that approximately 58,292 2009 MY Audi A6 and S6 model passenger cars, 2010 MY Audi A6, S6, A5, A5 Cabrio, S5, S5 Cabrio, A4 and S4 passenger cars, and 2010 MY Audi Q5 MPV's with indirect TPMS manufactured between October 17, 2008 and April 27, 2010 are affected (hereafter referred to as "noncompliant vehicles"). Volkswagen filed a report dated June, 30, 2010 pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h), and 49 CFR part 556, Volkswagen has petitioned for an exemption from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act as amended and recodified, 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of Volkswagen's petition was published, with a 30-day public comment period, on August 11, 2010, in the **Federal Register** (75 FR 48740). One comment was received from Schrader Electronics, Ltd. (Schrader), a manufacturer of direct-type TPMS systems.[2]

For further information on Volkswagen's petition or this decision, contact Mr. John Finneran, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–0645, facsimile (202) 366–5930.

Volkswagen reported that the noncompliance was brought to its attention on October 15, 2009 and June 8, 2010, by the NHTSA's Office of Vehicle Safety Compliance (OVSC) regarding the results of OVSC's compliance test of a 2009 MY Audi A6 model passenger car to FMVSS No. 138 requirements.

On June 3, 2009, OVSC conducted compliance tests on a MY 2009 Audi A6 four-door passenger car (Audi A6). The Audi A6 was tested to determine compliance with FMVSS No. 138, Tire pressure monitoring systems (TPMS). During testing, it was discovered that the Audi A6's low tire pressure/TPMS malfunction telltale (TPMS combination telltale) failed to remain illuminated as required by FMVSS No. 138.

During the FMVSS No. 138 compliance test of the Audi A6, the agency simulated a system malfunction by installing a smaller test vehicle tire using the procedures in paragraph S6 of FMVSS No. 138. The test of the Audi A6 transpired without incident until after OVSC cycled the ignition off, waited five minutes, cycled the ignition on, and then began to drive the vehicle. The TPMS combination telltale's illumination sequence repeated, as required in FMVSS 4.4(c)(2). The Audi A6 was then driven back to the test facility to replace the incompatible tire. When the Audi A6 was driven at speeds below 12.5 mph, the TPMS combination telltale extinguished while the incompatible tire was still mounted on the vehicle.[3]

According to 49 CFR 571.138, S4.4(c)(2), the TPMS combination telltale must remain continuously illuminated as long as the malfunction exists. Therefore, the premature extinguishment of the TPMS combination telltale is in contravention of 49 CFR 571.138 S4.4(c)(2), because the underlying cause of the malfunction, an incompatible tire mounted on the Audi A6, had not been corrected.

Volkswagen's Analysis of Noncompliance

After reviewing OVSC's test results Volkswagen determined that a noncompliance with FMVSS No. 138 existed in the OVSC tested vehicle as well as the other 2009 and 2010 MY vehicles. Volkswagen stated that the TPMS combination telltale does not remain illuminated during all scenarios required by paragraph S4.4 of FMVSS No. 138. Volkswagen also explained that there is an interrelationship between the TPMS and Electronic Stability Control System (ESC) in the noncompliant vehicles.

Volkswagen stated that when NHTSA tested the Audi A6 by driving it with three of the originally installed 245/40R18 tires and one incompatible 215/35ZR18 tire (7% smaller in diameter), the A6's ESC System (Audi's name for ESC is "Electronic Stability Program") initially detected a malfunction and illuminated the ESC malfunction indicator telltale lamp (ESC telltale lamp). That ESC malfunction detection will also cause the TPMS combination telltale to flash for 60–90 seconds. Both telltale lamps will then remain illuminated during the rest of the ignition cycle independent of vehicle speed. When the ignition is subsequently cycled, both the ESC and TPMS combination telltale lamps will re-illuminate. The nonconforming scenario occurs when the vehicle is maintained at a speed range between 6.2–12.5 miles per hour (mph) for approximately 0.2 mile. Under these conditions, the ESC malfunction logic code could be cleared from the control system, which causes the ESC and TPMS combination telltale lamps to extinguish. If the 6.2–12.5 mph speed range is maintained for a longer period of time after the ESC and TPMS combination telltale lamps extinguish (about 5 minutes), the TPMS acts independently of the ESC. The TPMS will recognize the incompatible tire and set the TPMS malfunction logic code and re-illuminate the TPMS combination telltale lamp. The TPMS combination telltale lamp will stay illuminated independent of any ESC malfunctions and perform as described above for as long as the incompatible tire is mounted.

Volkswagen argues that this noncompliance is inconsequential to motor vehicle safety, and makes several arguments. First, after the TPMS combination telltale lamp is extinguished, as described above, it will immediately re-illuminate if the vehicle is accelerated to a speed above 12.5 mph, and remain on throughout the ignition cycle regardless of the vehicle's speed. Second, the TPMS combination telltale lamp would re-illuminate within about 5 minutes if the speed under 12.5 mph and over 6.2 mph was maintained. Third, given this condition, the function of the TPMS combination telltale lamp would never lead to a "flicker" of the

[1] Volkswagen Group of America, Inc. (Volkswagen) is a vehicle manufacturer incorporated under the laws of the state of New Jersey.

[2] To view the petition, all supporting documents and the comment, log onto the Federal Docket Management System Web site at: *http://www.regulations.gov/*. Then follow the online search instructions to locate docket number "NHTSA–2010–0095."

[3] Incidentally, the Electronic Stability Control malfunction telltale also extinguished.

light or other such confusing performance of the signal except as required in FMVSS No. 138 S4.4(c). Fourth, Volkswagen argues that operation of the vehicle with an incompatible tire for a short distance under 12.5 mph presents no safety risk. Given that the TPMS combination telltale lamp would re-illuminate promptly upon the TPMS recognizing the incompatible tire at a lower speed after 5 minutes or upon acceleration to over 12.5 mph, the chance is insignificant that a driver might be confused by the signal, or even notice it. Fifth, Volkswagen is not aware of any field or customer complaints regarding this noncompliance.

Volkswagen also informed NHTSA that it has corrected the problem that caused this noncompliance so that it will not be repeated in future production.

In summation, Volkswagen believes that the described noncompliance of its vehicles with the requirements of FMVSS No. 138 is inconsequential as it relates to motor vehicle safety, and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA Decision

Requirement Background

Tire pressure monitoring systems provide a warning that indicates to the operator when a tire is significantly under inflated. Public Law 106–414 § 13; 114 Stat. 1800, 1806. Driving on a significantly under-inflated tire causes the tire to overheat and can lead to tire failure. Under-inflation also reduces tire tread life, and may affect the vehicle's handling and stopping ability. When the low tire pressure telltale illuminates, the operator is advised by the owner's manual to stop and check his or her tires as soon as possible, and inflate them to the proper pressure. 49 CFR 571.138 S 4.5(a). As discussed in the TPMS rulemaking, NHTSA expected that a typical vehicle will outlast its original set of tires, and believed that it is important that drivers continue to receive the benefits of the TPMS after the vehicle's tires are replaced. The TPMS rule required the TPMS to include a malfunction indicator that would alert the driver in situations in which the TPMS is unable to detect low tire pressure.[4] As is relevant here, the malfunction indicator is required to detect incompatible replacement tires.[5] This provides useful information to the driver regarding the long-term operability of the TPMS, thereby increasing the overall benefits of the system.[6] The indicator illuminates when tires and rims that are incompatible with the TPMS are mounted on the vehicle, not only to discourage such actions, but also to provide an ongoing reminder that the TPMS is unavailable to provide low tire pressure warnings.[7]

NHTSA's Analysis of Volkswagen's Reasoning

Based on NHTSA's testing and Volkswagen's explanation in its petition, the vehicles encompassed by Volkswagen's Noncompliance Information Report will not perform according to paragraph S4.4 of FMVSS No. 138. Instead, the TPMS combination telltale will illuminate as required until the noncomplying vehicle is turned off. When the vehicle is restarted, the TPMS combination telltale will flash on and off for approximately 65 seconds and then remain illuminated, unless, after the TPMS combination telltale stops flashing, the vehicle is driven at speeds between 6.2 and 12.5 mph. Under this condition, the TPMS combination telltale will extinguish. If the vehicle reaches a speed greater than 12.5 mph, the TPMS combination telltale will again flash on and off for approximately 65 seconds and then remain illuminated for as long as the vehicle continues to run. Similarly, if the vehicle is driven at speeds between 6.2 and 12.5 mph, the TPMS combination telltale will extinguish and then re-illuminate within about 5 minutes of driving, and then will remain illuminated continuously until the ignition is turned off.

NHTSA's understanding is that the TPMS combination telltale will not extinguish and illuminate repeatedly if the 12.5 mph speed threshold is crossed repeatedly. This is in line with Volkswagen's explanation of the system operation which indicates that once the TPMS combination telltale is illuminated after one extinguishment, it will remain "on" until the vehicle is turned off. At most, the TPMS combination telltale will remain off for five minutes.

Volkswagen states that no field or customer complaints have been received regarding the noncompliance. NHTSA has checked its records and also found no such complaints have been received.

NHTSA's Consideration

NHTSA rarely grants inconsequentiality petitions for noncompliances of performance standards.[8] The majority of the 49 CFR Part 556 petitions NHTSA has granted have been for noncompliances with labeling requirements in the FMVSSs. In order for a performance-related petition to be granted, the petitioner must demonstrate that the noncompliance "do[es] not create a significant safety risk."[9] The relevant issue is whether an occupant who is affected by the noncompliance is likely to be exposed to a significantly greater risk than an occupant using a compliant vehicle or equipment.[10]

In its petition, Volkswagen argues that driving a vehicle with an incompatible tire for a short distance at a speed under 12.5 mph presents no safety risk. Volkswagen explained that the TPMS combination telltale lamp would re-illuminate promptly upon the TPMS recognizing the incompatible tire at a lower speed or upon acceleration. A warning to the driver, in the manner required by FMVSS No. 138 must be provided within 20 minutes of cumulative driving time at vehicle speeds above 31.1 mph after the occurrence of a malfunction.

NHTSA Conclusions

First, there appears to be an insignificant safety risk created by the noncompliance. The underlying concern is that the TPMS would not be working, and the TPMS combination telltale would not so indicate. But the TPMS initially detects a malfunction and the TPMS combination telltale illuminates and remains illuminated for the remainder of the drive cycle. It is on subsequent drive cycles that the TPMS combination telltale will extinguish if the vehicle is maintained initially at a speed under 12.5 mph. The telltale illuminates and remains illuminated for the remainder of the drive cycle after about 5 minutes or when the vehicle exceeds 12.5 mph, whichever first occurs. This amounts to an outage of short duration at slow speeds. Significantly, the malfunction indicator would remain illuminated after that.

[4] 70 FR 18136, 18137 (April 8, 2005).

[5] 70 FR 18136, 18137 (April 8, 2005).

[6] 70 FR 18136, 18137 (April 8, 2005).

[7] 70 FR 18136, 18151 (April 8, 2005); See also 70 FR at 18159. (In order to ensure continued long-term functionality of the TPMS, the final rule requires a TPMS malfunction indicator capable of detecting when a replacement tire is installed which prevents continued proper functioning of the TPMS and of alerting the driver about the problem.)

[8] *General Motors Corp.,* 69 FR 19899, 19900 (April 14, 2004); *Cosco, Inc.,* 64 FR 29408, 29409 (June 1, 1999) (NHTSA–99–4033).

[9] *Cosco, Inc.,* 64 FR 29409.

[10] *GM Corp.,* 69 FR 19900; *Cosco, Inc.,* 64 FR 29409.

The driver would lack information that the TPMS system was not functioning due to an incompatible tire for such a limited period of time that there would not be a significant safety risk.[11]

Second, the TPMS combination telltale does not "flicker"[12] off and on in stop-and-go traffic. A flickering telltale, due to its inconsistent pattern of illumination, could confuse drivers and may lead them to ignore the warning provided by the TPMS combination telltale. As Volkswagen demonstrated in its petition, the vehicle's TPMS combination telltale will be extinguished for a period of about five minutes at slow speeds, after which it stays illuminated permanently.

Furthermore, occupants of the noncomplying vehicles would not be exposed to significantly greater risk than if they were occupants in a complying vehicle. The malfunction indicator would illuminate shortly after an incompatible tire is installed and the vehicle was then driven. This should provide a highly relevant warning to the person who had the new tire installed. The indicator would remain illuminated for the remainder of the drive cycle. On subsequent drive cycles, there may be a five-minute interval near the beginning of the drive cycle when the TPMS combination telltale extinguishes. Otherwise, the TPMS combination telltale will be illuminated. If an occupant of a noncomplying vehicle is unaware of a TPMS malfunction at this speed for five minutes, we do not believe that the malfunction would pose a significant risk when compared to an occupant in a compliant vehicle.

NHTSA's Response to Comments

In its comments to the docket, Schrader stated its belief that the petition should be denied because, it alleges, safety deficiencies are inherent in indirect type TPMS and the compliance test procedure used by NHTSA is inadequate for the detection of such deficiencies. Schrader did not specifically address the TPMS combination telltale lamp noncompliance that is the essence of the Volkswagen petition. Instead, Schrader stated that it believes there are more "problems" with the indirect system, and asked NHTSA to undertake a comprehensive review and expand its test procedure.

NHTSA's safety standards and test procedures generally are technology neutral to permit manufacturers to have maximum flexibility in meeting any specified performance requirements. Although Schrader alleges that the test procedure may be problematic, the current test procedure (TP–138–03) follows precisely the testing protocol specific in FMVSS No. 138 and did uncover a noncompliance in the Audi indirect TPMS system.

However, if Schrader still takes issue with the actual test requirements that originate in FMVSS No. 138, it should petition the agency for a rulemaking revision. Requests for rulemaking changes should be submitted in a petition for rulemaking filed under the provisions of 49 CFR Part 552 *Petitions for Rulemaking, Defect, and Noncompliance Orders.*

Because Schrader's comments did not provide any information addressing Volkswagen's telltale noncompliance that is the essence of its petition, Schrader's comments do not support denying the subject petition.

Decision

After a review of Volkswagen's arguments, Schrader's comments, and the final rule preamble language, NHTSA is convinced that Volkswagen has met its burden of demonstrating that the noncompliance does not present a significant safety risk. Therefore, NHTSA agrees with Volkswagen that this specific noncompliance is inconsequential to motor vehicle safety.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the 58,292[13] vehicles that Volkswagen no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles.

In consideration of the foregoing, NHTSA has decided that Volkswagen has met its burden of persuasion that the FMVSS No. 138 TPMS noncompliance in the vehicles identified in Volkswagen's Noncompliance Information Report is inconsequential to motor vehicle safety. Accordingly, Volkswagen's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 18, 2011.

Claude H. Harris,

Acting Associate Administrator for Enforcement.

[FR Doc. 2011–12688 Filed 5–23–11; 8:45 am]

BILLING CODE 4910–59–P

[11] We note that TPMSs were not developed to warn the driver of extremely rapid pressure losses that could accompany a vehicle encounter with a road hazard or a tire blowout. As the agency noted, presumably, a driver would be well aware of the tire problem in those situations, and the TPMS would provide little added benefit. 70 FR 53079, 53083 (Sept. 7, 2005).

[12] A "flicker" is different from the standard's S4.4(c)(2) requirement that a combination low tire pressure/TPMS malfunction telltale "flash" for a period of 60–90 seconds when a malfunction is detected.

[13] Volkswagen's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt Volkswagen as a manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for 58,292 of the affected vehicles. However, the agency cannot relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Volkswagen notified them that the subject noncompliance existed.

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2011–0125]

Pipeline Safety: Notice of Public Meetings on Managing Challenges With Pipeline Seam Welds and Improving Pipeline Risk Assessments and Recordkeeping

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of public meetings.

SUMMARY: Recent pipeline incidents involving seam weld anomalies and gaps in data and recordkeeping are driving a stronger focus on better managing these challenges. PHMSA is holding important public meetings to discuss its review of inspection reporting and incident findings in these areas. In addition, these public meetings are part of PHMSA's efforts to address the Secretary of Transportation's "Call to Action" to address pipeline infrastructure risks, drive for more aggressive safety efforts and to be more transparent when executing these safety measures.

These public meetings are designed to provide an open forum for exchanging information on the challenges associated with pipeline seam welds and improving pipeline risk assessments and recordkeeping. Specifically, these public meetings will facilitate individual, panel and working

group discussions for the following objectives:

Managing Challenges With Pipeline Seam Welds—July 20

1. Further determining the nature and extent of the seam weld issue from industry and government data.
2. Presenting perspectives on how anomalies in seam welds are identified and managed employing risk assessments, technology and standards or best practices.
3. Presenting the scope of a recently awarded PHMSA research study on seam welds.
4. Providing specifically designed working groups to further craft the scope for this PHMSA research study and other related topics.

Improving Pipeline Risk Assessments and Recordkeeping—July 21

1. Provide a U.S. and International regulatory perspective on pipeline integrity risk assessments.
2. Provide an operator overview of the challenging factors with conducting risk assessments, canvassing effective approaches, and case studies.
3. Identify options with addressing interactive threats, legacy pipelines and approaches for dealing with recordkeeping gaps.

DATES: The public meeting on managing challenges with pipeline seam welds will be held on Wednesday, July 20, 2011, from 8 a.m. to 4 p.m. EDT. The public meeting on improving pipeline risk assessments and recordkeeping will be held on Thursday, July 21, 2011, from 8 a.m. to 4:30 p.m. EDT. Please refer to these public meetings listed on *http://primis.phmsa.dot.gov/meetings/for* more information.

ADDRESSES: These public meetings will be held at The Westin Arlington Gateway, 801 North Glebe Road, Arlington, VA 22203, Phone: 703–717–6200, Fax: 703–717–6260 or *http://www.westinarlingtongateway.com/.* Please contact the Westin to reserve a room using "USDOT/PHMSA" for the room block name at the rate of $157/night. This room rate is available for Tuesday night July 19 and Wednesday night July 20 until the reserved rooms at this rate are taken. A very limited number of rooms are available at this rate on July 21 until they are taken. Please also contact the Westin for information on facilities or services for individuals with disabilities, or to request special assistance during these public meetings.

Comments may be submitted to the docket in the following ways:

E-Gov Web Site: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of the U.S. Department of Transportation, West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number PHMSA–2011–0127 at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or view the Privacy Notice at *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the U.S. Department of Transportation, West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: "Comments on PHMSA–2011–0127." The Docket Clerk will date-stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (Internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to seek special assistance at the meeting, please contact Robert Smith at 919–238–4759 by July 1, 2011.

FOR FURTHER INFORMATION CONTACT: Robert Smith by e-mail at *robert.w.smith@dot.gov* or by phone at 919–238–4759.

SUPPLEMENTARY INFORMATION:

Public Meetings Registration: Please visit *http://primis.phmsa.dot.gov/meetings/and* click on these public meetings to register.

Preliminary Agenda for the Public Meeting on Managing Challenges With Pipeline Seam Welds

8 a.m. Good Morning/Welcome
8:10 a.m. Panel 1: What is the Nature/Extent of the Issue?
9:40 a.m. Break
9:55 a.m. Panel 2: Identifying/Managing Seam Weld Challenges
11:10 a.m. Presentation: Seam Weld Research Project and Input/Refinement of this Targeted Research
12 p.m. Lunch—On your Own
1:30 p.m. (Concurrent Sessions)
Working Group 1: Identifying Gaps in Risk Assessments
Working Group 2: Identifying Gaps in Technology
Working Group 3: Identifying Gaps with Assessment Methods
4 p.m. Adjournment

Preliminary Agenda for the Public Meeting on Improving Pipeline Risk Assessments and Recordkeeping

8 a.m. Good Morning/Welcome
8:10 a.m. Panel 1: U.S. & Canadian Regulatory Perspective on Risk Assessments
9:30 a.m. Panel 2: Pipeline Operator Perspective on Risk Assessments
Break taken during panel 2
11:30 a.m. Lunch—On your Own
1 p.m. Panel 3: How Should Recordkeeping Gaps Influence Risk Assessments?
2:30 p.m. Break
2:45 p.m. Panel 4: Identifying Interactive Threats and Understanding Options
4:30 p.m. Summary and Adjournment

Webcasting: The public meeting on Managing Challenges with Pipeline Seam Welds will not be webcasted. The public meeting on Improving Pipeline Risk Assessments and Recordkeeping will be webcasted. Please refer to this event listed on *http://primis.phmsa.dot.gov/meetings/* for more information.

Issued in Washington, DC, on May 18, 2011.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2011–12690 Filed 5–23–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Community Volunteer Income Tax Assistance (VITA) Matching Grant Program—Availability of Application Packages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document provides notice of the availability of application packages for the 2012 Community Volunteer Income Tax Assistance (VITA) Matching Grant Program.

DATES: Application packages are available from the IRS on May 23, 2011. The deadline for submitting an application to the IRS for the Community VITA Matching Grant Program is June 30, 2011. *Electronic copies of the application package can be obtained by visiting: IRS.gov* (key word search—"VITA Grant") or *Grants.gov.* Application packages may also be requested by sending an e-mail to *Grant.Program.Office@irs.gov*. Applications may be submitted electronically through *Grants.gov* or via hardcopy by the United States Postal Service, mail, or private delivery service by the deadline date.

ADDRESSES: Internal Revenue Service, Grant Program Office, 401 West Peachtree St., NW., Suite 1645, Stop 420–D, Atlanta, GA 30308.

FOR FURTHER INFORMATION CONTACT: Grant Program Office (404) 338–7894 (not a toll free number). The e-mail address is *Grant.Program.Office@irs.gov*.

SUPPLEMENTARY INFORMATION: Authority for the Community Volunteer Income Tax Assistance (VITA) Matching Grant Program is contained in the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Public Law 112–10, signed April 15, 2011.

Dated: May 9, 2011.

Robin Taylor,

Chief, Grant Program Office, IRS, Stakeholder Partnerships, Education & Communication.

[FR Doc. 2011–12797 Filed 5–23–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program Availability of Application Packages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document provides notice of the availability of Application Packages for the 2012 Tax Counseling for the Elderly (TCE) Program.

DATES: Application Packages are available from the IRS on May 23, 2011. The deadline for submitting an application package to the IRS for the 2012 Tax Counseling for the Elderly (TCE) Program is June 30, 2011. *Electronic copies of the application package can be obtained by visiting: IRS.gov* (key word search—"TCE") or *Grants.gov.* Application packages may also be requested by sending an e-mail to *tce.grant.office@irs.gov.* Applications may be submitted either via hardcopy by the United States Postal Service, mail, or private delivery service; or electronically through *Grants.gov* by the deadline date.

ADDRESSES: Internal Revenue Service, 5000 Ellin Road, NCFB C4–110, SE:W:CAR:SPEC:FO:GPO, Lanham, Maryland 20706, *Attention:* Tax Counseling for the Elderly Grant Program Office.

FOR FURTHER INFORMATION CONTACT: Grant Program Office (404) 338–7894 (not a toll-free telephone number). The e-mail address is *tce.grant.office@irs.gov*.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in Section 163 of the Revenue Act of 1978, Public Law 95–600, (92 Stat. 12810), November 6, 1978. Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives the IRS authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year. Because applications are being solicited before the FY 2012 budget has been approved, cooperative agreements will be entered into subject to the appropriation of funds.

Dated: May 9, 2011.

Robin Taylor,

Chief, Grant Program Office, IRS, Stakeholder Partnerships, Education & Communication.

[FR Doc. 2011–12794 Filed 5–23–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be May 25, 2011.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on May 25, 2011, in the Appeals Media Center beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Daniel M. Beckerle, C:AP:P&V:ART, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 435–5790 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., that a closed meeting of the Art Advisory Panel will be held on May 25, 2011, beginning at 9:30 a.m., in the Appeals Media Center, Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

Chris Wagner,

Chief, Appeals.

[FR Doc. 2011–12727 Filed 5–23–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Minimum Security Devices and Procedures

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before June 23, 2011. A copy of this ICR, with applicable supporting documentation, can be obtained from *RegInfo.gov* at *http://www.reginfo.gov/public/do/PRAMain*.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these *addresses:* Office of Information and Regulatory Affairs, *Attention:* Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 393–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552 by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at *ira.mills@ots.treas.gov,* or on (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Minimum Security Devices and Procedures.

OMB Number: 1550–0062.

Form Number: N/A.

Description: The requirement that savings associations establish a written security program is necessitated by the Bank Protection Act (12 U.S.C. 1881–1884), which requires the Federal supervisory agencies to promulgate rules establishing minimum standards with which each financial institution must comply with respect to the installation, maintenance, and operation of security devices and procedures to discourage robberies, burglaries, and larcenies, and to assist in the identification and apprehension of persons who commit such acts. Pursuant to the statutory mandate, OTS adopted its regulations in 1969 (12 CFR part 568). These regulations were revised in 1991 and in 2001. In accordance with part 568, a savings association must adopt a written security program, the association's board of directors must approve the program, and each association's security officer must report annually to the board on the effectiveness of the program. Section 568.5 requires that savings associations and their subsidiaries comply with the Interagency Guidelines Establishing Information Security Standards, set forth in Appendix B to part 570. The other Federal supervisory agencies, Office of the Comptroller of the Currency, Board of the Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation, adopted virtually identical regulations in 1969, and likewise revised them in 1991 and 2001.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 741.

Estimated Frequency of Response: Annually.

Estimated Total Burden: 1,482 hours.

Dated: May 18, 2011.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–12687 Filed 5–23–11; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Rural Health Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Rural Health Advisory Committee will hold a meeting on June 1–2, 2011, in the Recreation Hall at the VA Montana Healthcare System, 3687 Veterans Drive, Ft. Harrison, Montana. The sessions will begin at 8 a.m. each day and adjourn at 4:45 p.m. on June 1 and at 5:30 p.m. on June 2. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on health care issues affecting enrolled Veterans residing in rural areas. The Committee examines programs and policies that impact the provision of VA health care to enrolled Veterans residing in rural areas, and discusses ways to improve and enhance VA services for these Veterans.

On June 1, the Committee will hear from its Chairman, the Director of the VA Montana Healthcare System, the Veterans Integrated Service Network (VISN) 19 Women Veterans Healthcare Coordinator, Montana and surrounding region rural health project managers, the Veterans Rural Health Resource Center—Western Region Native Domain Lead, and the Office of Rural Health Director.

On June 2, the Committee will hear from the VISN 19 Network Director, VISN 19 Telehealth Manager, Veterans Health Administration (VHA) lead for the Supporting Veterans through Services for Family Caregivers Initiative, and the VHA-Nationwide Health Information Network Pilot Manager. The Committee will also break out into two workgroups. One is for the Office of Rural Health Strategic Plan discussion and work session and the other is the Committee's annual report development session.

Public comments will be received at 5 p.m. on June 2. Individuals who speak are invited to submit a 1–2 page summary of their comments for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Ms. Christina White, Designated Federal Officer, Office of Rural Health (10A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or at *rural.health.inquiry@va.gov*. Any member of the public seeking additional information should contact Ms. White at (202) 461–1933.

Dated: May 18, 2011.

By Direction of the Secretary.

William F. Russo,

Director of Regulations Management, Office of General Counsel.

[FR Doc. 2011–12641 Filed 5–23–11; 8:45 am]

BILLING CODE P

Reader Aids

Federal Register

Vol. 76, No. 100

Tuesday, May 24, 2011

CUSTOMER SERVICE AND INFORMATION

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, MAY

CFR PARTS AFFECTED DURING MAY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

10 CFR

429.....24762
430.....24762, 25211
600.....26579
603.....26579
609.....26579
611.....26579

Proposed Rules:

2.....27924, 27925
26 .....24831, 28191, 28192
35.....29171
40.....28336
50.....26223
52.....27924, 27925
61.....24831
72.....28193
74.....28193
150.....28193, 28336
430.....26656
431.....25622
1703.....28194

12 CFR

335.....28168
614.....29992
956.....29147
1202.....29633
1267.....29147

Proposed Rules:

45.....27564
205.....29902
226.....27390
237.....27564
324.....27564
349.....28358
624.....27564
1221.....27564

13 CFR

124.....27859

Proposed Rules:

121 .....26948, 27935, 27952
124.....26948
125.....26948
126.....26948
127.....26948

14 CFR

25.....25229
39 .....24343, 24345, 24349, 24351, 24354, 24356, 24358, 24360, 24793, 24796, 24798, 25534, 25535, 27220, 27227, 27232, 27237, 27239, 27240, 27242, 27244, 27246, 27861, 27863, 27865, 27872, 27875, 27880, 28169, 28626, 28632, 28635, 28637, 28639, 29997
71 .....25537, 28305, 28306, 28308, 28641, 28887, 28888
97 .....25231, 25232, 28171, 28173

Proposed Rules:

25 .....25648, 26949, 26957
39 .....24407, 24832, 25259, 25264, 26959, 26962, 27281, 27282, 27615, 27617, 27952, 27954, 27956, 27958, 28373, 28376, 28683, 28914, 29176, 29673, 30040, 30043
65.....29336
71 .....24409, 26658, 27619, 28379, 28382, 28684, 28685, 28686, 28687, 28915, 29176, 30045, 30047
119.....29336
121.....29336
135.....29336
142.....29336
460.....24836

15 CFR

714.....26583
734.....29610
740.....29610
742.....29610
743.....29610
744.....29998
772.....29610
774.....29610

16 CFR

1217.....27882
1512.....27882

17 CFR

4.....28641
202.....28888

Proposed Rules:

Ch. I.....25274
1.....27802, 29818
23.....27621, 27802
140.....27802
200.....30048
229.....25273
240 .....25273, 26550, 29818
242.....26550
249.....26550
275.....27959

19 CFR

4.....27606
210.....24363

20 CFR

404.....24802
405.....24802
416.....24802
422.....24802

21 CFR

1.....25531, 25542
73.....25234
522.....27888
800.....28308
878.....29153

Proposed Rules:

11.....30050, 30051
101.....30050, 30051
866.....28688, 28689
1316.....26660

22 CFR

120.....28174
124.....28174
126.....28174, 30001

Proposed Rules:

Ch. I.....26651

24 CFR

200.....24363
207.....24363

25 CFR

Proposed Rules:

Ch. III.....26967

26 CFR

1 .....26178, 27609, 28890
31.....26583
301.....24813

Proposed Rules:

1.....30052
31.....26678

27 CFR

9.....30002

Proposed Rules:

9.....30052, 30060

28 CFR

Proposed Rules:

8.....26660
9.....26660
50.....29675
Ch. XI.....26651

29 CFR

1910.....24576
1915.....24576
4022.....27889

Proposed Rules:

1904.....28383
2205.....30064

30 CFR

285.....28178
901.....30008
926.....30010

Proposed Rules:

70.....25277
71.....25277
72.....25277
75.....25277
90.....25277
104.....25277

31 CFR

Proposed Rules:

1069.....24410

32 CFR

706.....28180

33 CFR

3.....26603
100 .....26603, 27890, 27892, 29640, 29642
117 .....24372, 26181, 26182, 26606, 27250, 28309, 28311, 28645, 30014
165 .....24813, 25545, 25548, 26183, 26603, 26607, 26931, 27251, 27253, 27895, 27897, 28312, 28315, 28895, 29645, 29647, 30014, 30018, 30020
334.....30023, 30024

Proposed Rules:

100.....27284, 30069
165 .....24837, 24840, 24843, 25278, 27967, 27970, 28386, 30072
167.....27287, 27288

34 CFR

Proposed Rules:

Ch. VI.....25650

36 CFR

Proposed Rules:

7.....28388

37 CFR

202.....27898
203.....27898
211.....27898

38 CFR

17.....26148
71.....26148

Proposed Rules:

17.....28917
39.....28925

39 CFR

Proposed Rules:

3050.....28696

40 CFR

9.....26186
52 .....24372, 25178, 26192, 26609, 26615, 26933, 27610, 27613, 27898, 27904, 27908, 28181, 28646, 28661, 29153, 29649, 29652, 30025
55.....29158
60.....28318, 28662
63 .....28318, 28662, 28664
180 .....25236, 25240, 26194, 27256, 27261, 27268, 28675
268.....30027
272.....26616
300.....30027
710.....27271
721.....26186, 27910
1042.....25246, 26620

Proposed Rules:

52 .....24421, 24846, 25652, 26224, 26679, 27290, 27622, 27973, 28195, 28393, 28696, 28707, 28934, 28942, 28944, 29180, 29182, 29680, 29686, 29688, 29695, 30080
60.....24976
63 .....24976, 29032, 29528
81.....29695
180.....25281
272.....26681
300.....30081
721.....26225, 27294

42 CFR

412.....26432
422.....26490
480.....26490
482.....25550
485.....25550

Proposed Rules:

10.....29183
Ch. IV.....28196
412.....25788
413.....25788, 26364
418.....26806, 28195
424.....26364
447.....26342
455.....26364
476.....25788
482.....25460
485.....25460
491.....25460
494.....25460

44 CFR

64.....26938
65.....26941, 26943
67.....29656

Proposed Rules:

67 .....26968, 26976, 26978, 26980, 26981, 26982

45 CFR

154.....29964

47 CFR

0 .....24376, 24383, 26199
1 .....24376, 24383, 26620, 29158
20.....26199
64.....24393, 26641
73.....27914

Proposed Rules:

Ch. I.....28397
0.....24434
1.....24434, 26983
2.....26983
22.....26983
24.....26983
27.....26983
64.....24437, 24442
73.....24846, 28946
90.....26983, 27296
95.....26983

48 CFR

19.....26220
Ch. 2.....27274
209.....27274
211.....25565
215.....28856
216.....25566
223.....25569
225.....27274
234.....28856
237.....25565
242.....28856
244.....28856
245.....28856
252 .....25566, 25569, 28856

Proposed Rules:

4.....24443
8.....24443
17.....24443
37.....24443
52.....24443
Ch. 6.....26651
1511.....26232
1552.....26235
1809.....25656
1812.....25657
1828.....25657
1852.....25657

49 CFR

191.....28326
192.....28326
193.....28326
195.....25576, 28326
383.....26854
384.....26854
385.....26854
390.....29169
395.....25588
451.....24402
571.....28132

Proposed Rules:

172.....27300
177.....27300
Ch. II.....26682
385.....26681, 28207
386.....26681, 28207
390 .....26681, 28207, 28403
391.....28403
395.....26681, 28207
531.....26996
533.....26996
665.....28947

50 CFR

17 .....25590, 25593, 29108
21.....29665
218.....25480, 27915
622.....30034
648 .....28328, 29670, 30035
660 .....25246, 27508, 28897
679 .....24403, 24404, 29671

Proposed Rules:

17 .....25150, 26086, 27184, 27629, 27756, 28405, 30082
223.....28715
226.....25660
424.....28405
600.....29707
648.....24444, 29717
665.....29718
679.....25295

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 ''P L U S'' (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. 1308/P.L. 112–13
To amend the Ronald Reagan Centennial Commission Act to extend the termination date for the Commission, and for other purposes. (May 12, 2011; 125 Stat. 215)
Last List April 28, 2011

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.