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OFFICE OF MANAGEMENT AND BUDGET

5 CFR Ch. III and 48 CFR Ch. 1

Federal Regulations; OMB Circulars, OFPP Policy Letters, and CASB Cost Accounting Standards Included in the Semiannual Agenda of Federal Activities

AGENCY: Office of Management and Budget.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Office of Management and Budget (OMB) is publishing its semiannual agenda of upcoming activities for Federal regulations, OMB Circulars, Office of Federal Procurement Policy (OFPP) Policy Letters, and Cost Accounting Standards Board (CASB) Cost Accounting Standards.

OMB Circulars and OFPP Policy Letters are published in accordance with OMB's internal procedures for implementing Executive Order No. 12866 (October 4, 1993, 58 FR 51735). OMB policy guidelines are issued under authority derived from several sources including: Subtitles I, II, and V of Title 31, United States Code; Executive Order No. 11541; and other specific authority as cited. OMB Circulars and OFPP Policy Letters communicate guidance and instructions of a continuing nature to executive branch agencies. As such, most OMB Circulars and OFPP Policy Letters are not regulations. Nonetheless, because these issuances are typically of public interest, they are generally published in the **Federal Register** in both proposed (for public comment) and final stages. For this reason, they are presented below in the standard format of ''prerule,'' ''proposed rule,'' and ''final rule'' stages.

CASB Cost Accounting Standards are issued under authority derived from 41 U.S.C. 1501. Cost Accounting Standards are rules governing the measurement, assignment, and allocation of costs to contracts with the United States Government.

For purposes of this agenda, we have excluded directives that outline procedures to be followed in connection with the President's budget and legislative programs and directives that affect only the internal functions, management, or personnel of Federal agencies.

FOR FURTHER INFORMATION CONTACT: See agency person listed for each entry in the agenda, c/o Office of Management and Budget, Washington, DC 20503. On the overall agenda, contact Kevin F. Neyland, (202) 395–5897, at the above address.

Kevin F. Neyland,

Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2011–24712 Filed 9–28–11; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2011–0036]

Golden Nematode; Removal of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the golden nematode regulations by removing the townships of Elba and Byron in Genesee County, NY, from the list of generally infested areas. Surveys have shown that the fields in these two townships are free of golden nematode, and we have determined that regulation of these areas is no longer necessary. As a result of this action, all the areas in Genesee County, NY, that have been listed as generally infested will be removed from the list of areas regulated for golden nematode.

DATES: This interim rule is effective September 29, 2011. We will consider all comments that we receive on or before November 28, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0036-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0036, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0036* 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.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan M. Jones, National Program Manager, Emergency and Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737; (301) 734–5038.

SUPPLEMENTARY INFORMATION:

Background

The golden nematode (*Globodera rostochiensis*) is a destructive pest of potatoes and other solanaceous plants. Potatoes cannot be economically grown on land which contains large numbers of the nematode. The golden nematode has been determined to occur in the United States only in parts of the State of New York.

In 7 CFR part 301, the golden nematode quarantine regulations (§§ 301.85 through 301.85–10, referred to below as the regulations) set out procedures for determining the areas regulated for golden nematode and impose restrictions on the interstate movement of regulated articles from regulated areas.

Paragraph (a) of § 301.85–2 states that the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service (APHIS), shall list as regulated areas each quarantined State or each portion thereof in which golden nematode has been found or in which there is reason to believe that golden nematode is present, or which it is deemed necessary

to regulate because of their proximity to infestation or their inseparability for quarantine enforcement purposes from infested localities. The townships of Elba and Byron in Genesee County, NY, were regulated for golden nematode in 1977 on the basis of their proximity to and association with three fields in Orleans County, NY, in which golden nematode was detected.

Paragraph (c) of § 301.85–2 states that, in accordance with the criteria listed in § 301.85–2(a), the Deputy Administrator shall terminate the designation of any area listed as a regulated area and suppressive or generally infested area when he or she determines that such designation is no longer required. From 1977 until 2010, potato production fields in the townships of Elba and Byron have had a sequence of surveys with negative laboratory results for the detection of golden nematode. As a result, it is no longer necessary to regulate these townships in Genesee County, NY, and restrict interstate movement of golden nematode regulated articles from these townships. This is the first time APHIS has removed an area that had been listed as generally infested with golden nematode from regulation.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary on two townships in Genesee County, NY, that have been regulated for golden nematode. Under these circumstances, the Administrator, APHIS, has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. The full analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

This rule codifies a Federal Order issued in December 2010, removing the townships of Elba and Byron in Genesee County, NY, from the areas listed in § 301.85–2a as regulated because of the golden nematode. These two townships are the first areas removed from the golden nematode quarantine.

In 2007, there were 13 farms in Genesee County that harvested potatoes. These farms represented about 2 percent of such farms in New York, and comprised about 6 percent of the State's acres of harvested potatoes. New York farms that harvested potatoes in 2007 represented about 6 percent of such farms in the United States and held about 2 percent of the U.S. acres of harvested potatoes.

Affected entities will benefit from no longer needing to satisfy compliance requirements of the quarantine. They are also expected to find improved export opportunities. While the potato farms in the two townships qualify as small entities, they are few in number and their share of the U.S. potato industry is minor.

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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.85–2a [Amended]

■ 2. In § 301.85–2a, under the heading New York, in paragraph (1), the entry for Genesee County is removed.

Done in Washington, DC, this 23rd day of September 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–25088 Filed 9–28–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2010–0075]

Gypsy Moth Generally Infested Areas; Additions in Indiana, Maine, Ohio, Virginia, West Virginia, and Wisconsin

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations to add areas in Indiana, Maine, Ohio, Virginia, West Virginia, and Wisconsin to the list of generally infested areas based on the detection of infestations of gypsy moth in those areas. The interim rule was necessary to prevent the artificial spread of the gypsy moth to noninfested areas of the United States.

DATES: Effective on September 29, 2011, we are adopting as a final rule the interim rule published at 76 FR 21613–21615 on April 18, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Julie S. Spaulding, Forest Pest Programs

Manager, Emergency and Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737; (301) 734–5332.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest, shade, and commercial trees such as nursery stock and Christmas trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45–12 and referred to below as the regulations) restrict the interstate movement of regulated articles from generally infested areas to prevent the artificial spread of the gypsy moth. Section 301.45–3 of the regulations lists generally infested areas.

In an interim rule [1] effective and published in the **Federal Register** on April 18, 2011 (76 FR 21613–21615, Docket No. APHIS–2010–0075), we amended § 301.45–3(a) by adding portions of Indiana, Maine, Ohio, Virginia, West Virginia, and Wisconsin to the list of generally infested areas.

Comments on the interim rule were required to be received on or before June 17, 2011. We received one comment from a State agricultural agency that was in favor of this action. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 76 FR 21613–21615 on April 18, 2011.

[1] To view the interim rule and its supporting economic analysis, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0075.*

Done in Washington, DC, this 23rd day of September 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–25089 Filed 9–28–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 305

[Docket No. APHIS–2008–0022]

RIN 0579–AC94

Phytosanitary Treatments; Location of and Process for Updating Treatment Schedules; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule that was published in the **Federal Register** on January 26, 2010, and effective on February 25, 2010, we amended the phytosanitary treatment regulations by removing the lists of approved treatments and treatment schedules from the regulations, while retaining the general requirements for performing treatments and certifying or approving treatment facilities. The final rule also removed treatment schedules from other places where they had been found in APHIS regulations and provided that approved treatment schedules will instead be found in the Plant Protection and Quarantine Treatment Manual, which is available on the Internet. In the final rule, we neglected to provide for the Administrator of the Animal and Plant Health Inspection Service to approve treatments that are not found in the Treatment Manual, and we did not retain text explaining that irradiation can be used as a substitute for other treatments. In this amendment, we are amending the regulation to provide for such approval of treatments and to restore the text we removed.

DATES: *Effective Date:* September 29, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. S. Gadh, Senior Risk Manager—Treatments, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

In a final rule that was published in the **Federal Register** on January 26, 2010 (75 FR 4228–4253, Docket No. APHIS–2008–0022), and effective on February 25, 2010, we amended the phytosanitary treatment regulations in 7 CFR part 305 by removing the lists of approved treatments and treatment schedules from the regulations, while retaining the general requirements for performing treatments and certifying or approving treatment facilities. The final rule also removed treatment schedules from other places where they had been found in 7 CFR chapter III.

We replaced the lists of approved treatments that had been in § 305.2 with a general statement in paragraph (b) of that section that approved treatment schedules are set out in the Plant Protection and Quarantine (PPQ) Treatment Manual. Paragraph (b) went on to state that treatments may only be administered in accordance with the treatment requirements of part 305 and in accordance with treatment schedules found in the PPQ Treatment Manual. We also amended the general requirements for performing treatments and certifying or approving treatment facilities to indicate that such facilities need to be able to conduct the treatments in the PPQ Treatment Manual.

However, while the PPQ Treatment Manual contains only approved treatment schedules, it is inappropriate to refer to the PPQ Treatment Manual as the sole place where approved treatment schedules may be found and to set requirements for treatment facilities based only on the treatments in the PPQ Treatment Manual. A treatment schedule is ultimately approved for use not by dint of its inclusion in the PPQ Treatment Manual but because the Administrator of the Animal and Plant Health Inspection Service has decided that the treatment schedule is effective at neutralizing the targeted plant pest. Ultimately, the regulations should refer to approval by the Administrator as the standard for use of a treatment schedule.

Therefore, we are amending paragraph (b) of § 305.2 to indicate that treatments may only be administered in accordance with the requirements of part 305 and in accordance with treatment schedules approved by the Administrator as effective at neutralizing quarantine pests. We are also amending paragraph (b) to explicitly indicate that the treatment schedules found in the PPQ Treatment Manual have been approved by the Administrator.

As the regulations in part 305 now indicate that treatment must be administered in accordance with treatment schedules approved by the Administrator, it is appropriate to provide a means by which persons can request that the Administrator approve other treatment schedules. Therefore, we are adding a new paragraph (c) to § 305.2. This paragraph indicates that persons who wish to have a treatment schedule approved by the Administrator as effective at neutralizing a quarantine pest or pests may apply for approval by submitting the treatment schedule, along with any supporting information and data, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Science and Technology, 1730 Varsity Drive, Suite 400, Raleigh, NC 27606–5202. Upon receipt of such an application, the Administrator will review the schedule and the supporting information and data and respond with approval or denial of the treatment schedule. If the Administrator determines the treatment schedule to be of potential general use, the Administrator may add the new treatment schedule to the PPQ Treatment Manual or revise an existing schedule, as appropriate, in accordance with the process described in § 305.3.

To accommodate this change, we are redesignating current paragraph (c) of § 305.2 as paragraph (d). We are also amending the definition of *PPQ Treatment Manual* in § 305.1 to make it clear that all treatment schedules in the manual are approved by the Administrator, and we are amending the heading of § 305.3, which describes the process for adding, revising, or removing treatment schedules, to indicate that it specifically applies to the PPQ Treatment Manual.

These changes also necessitate changes in §§ 305.5 through 305.9, which set out the requirements for administering chemical treatment, cold treatment, quick freeze treatment, heat treatment, and irradiation treatment, respectively. Where these sections have referred to facilities capable of performing treatments in accordance with treatment schedules in the PPQ Treatment Manual, they now also refer to performing treatments in accordance with treatment schedules approved in accordance with § 305.2. For other references to the PPQ Treatment Manual in those sections, we have added references to treatment schedules approved in accordance with § 305.2 as well. A complete list of these changes can be found in the regulatory text at the end of this document.

As noted earlier, before the publication of the January 2010 final rule, § 305.2 listed approved treatments for various articles. Paragraph (h) of § 305.2 listed approved treatments for fruits and vegetables. At the beginning of the list, paragraph (h)(1) stated that irradiation treatment in accordance with part 305 could be substituted for other approved treatments for any pests for which irradiation was an approved treatment. For example, several fruits and vegetables may be treated with cold treatment to neutralize certain fruit flies; as irradiation is an approved treatment for fruit flies, irradiation for fruit flies in accordance with part 305 may be substituted for cold treatment for those fruits and vegetables.

We did not include this text in the revised part 305; it is contained in the PPQ Treatment Manual, thus confirming that substitution of irradiation for other approved treatments has been approved by the Administrator. However, since the publication of the January 2010 final rule, there has been some confusion among the regulated community regarding our policy on substituting irradiation for other approved treatments.

To address this confusion, we are adding a new paragraph (o) to § 305.9, which contains requirements for performing irradiation treatment, that describes our policy on substituting irradiation for other approved treatments. The new paragraph reads: ''Treatment of fruits and vegetables that are from foreign localities, from Hawaii, Puerto Rico, and the U.S. Virgin Islands, or from domestic areas under quarantine with irradiation in accordance with this section may be substituted for other approved treatments if the target pests of the other approved treatments are approved for treatment with irradiation in the PPQ Treatment Manual or approved for treatment with irradiation in accordance with § 305.2.''

List of Subjects in 7 CFR Part 305

Agricultural commodities, Chemical treatment, Cold treatment, Heat treatment, Imports, Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Quick freeze, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 305 as follows:

PART 305—PHYTOSANITARY TREATMENTS

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 305.1, in the definition of *PPQ Treatment Manual,* the first sentence is revised to read as follows:

§ 305.1 Definitions.

* * * * *

PPQ Treatment Manual. A document that contains treatment schedules that are approved by the Administrator for use under this part. * * *

* * * * *

■ 3. Section 305.2 is amended as follows:

■ a. By revising paragraph (b) to read as set forth below.

■ b. By redesignating paragraph (c) as paragraph (d).

■ c. By adding a new paragraph (c) to read as set forth below.

§ 305.2 Approved treatments.

* * * * *

(b) Treatments may only be administered in accordance with the requirements of this part and in accordance with treatment schedules approved by the Administrator as effective at neutralizing quarantine pests. The treatment schedules found in the PPQ Treatment Manual have been approved by the Administrator. Treatment schedules may be added to the PPQ Treatment Manual in accordance with § 305.3. Treatment schedules may also be approved by the Administrator in accordance with paragraph (c) of this section.

(c) Persons who wish to have a treatment schedule approved by the Administrator as effective at neutralizing a quarantine pest or pests may apply for approval by submitting the treatment schedule, along with any supporting information and data, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Science and Technology, 1730 Varsity Drive, Suite 400, Raleigh, NC 27606–5202. Upon receipt of such an application, the Administrator will review the schedule and the supporting information and data and respond with approval or denial of the treatment schedule. If the Administrator determines the treatment schedule to be of potential general use, the Administrator may add the new treatment schedule to the PPQ Treatment Manual or revise an existing schedule, as appropriate, in accordance with § 305.3.

* * * * *

■ 4. In § 305.3, the section heading is revised to read as follows:

§ 305.3 Processes for adding, revising, or removing treatment schedules in the PPQ Treatment Manual.

* * * * *

§ 305.5 [Amended]

■ 5. Section 305.5 is amended as follows:

■ a. In paragraph (a)(1), by adding the words ''or in another treatment schedule approved in accordance with § 305.2'' after the word ''Manual''.

■ b. In paragraph (c)(1), in the first sentence, by adding the words ''or in another treatment schedule approved in accordance with § 305.2'' after the word ''Manual''; and, in the second sentence, by adding the words ''or approved in accordance with § 305.2'' after the word ''Manual''.

■ c. In paragraph (c)(3), in the first sentence, by adding the words ''or in another approved treatment schedule'' after the word ''Manual''.

§ 305.6 [Amended]

■ 6. Section 305.6 is amended as follows:

■ a. In paragraph (a) introductory text, by adding the words ''or in another treatment schedule approved in accordance with § 305.2'' after the word ''Manual''.

■ b. In paragraph (c)(1), by adding the words ''or in another approved treatment schedule'' after the word ''Manual''.

■ c. In paragraph (d)(14), by adding the words ''or in accordance with another approved treatment schedule'' after the word ''Manual''.

■ 7. Section 305.7 is amended as follows:

■ a. In the second sentence, by removing the word ''the'' before the word ''fruits''.

■ b. By adding a new sentence at the end of the section to read as set forth below.

§ 305.7 Quick freeze treatment requirements.

* * * Requests to authorize quick freeze as a treatment for other fruits and vegetables may be made in accordance with § 305.2(c).

§ 305.8 [Amended]

■ 8. In § 305.8, paragraph (a)(1) is amended by adding the words ''or in another treatment schedule approved in accordance with § 305.2'' after the word ''Manual''.

■ 9. Section 305.9 is amended as follows:

■ a. In paragraph (d)(1), by adding the words ''or in another treatment schedule approved in accordance with § 305.2'' after the word ''Manual''.

■ b. In paragraph (i), by adding the words ''or in another approved treatment schedule'' after the word ''Manual''.

■ c. In paragraph (j)(2), by adding the words ''or by another approved treatment schedule'' after the word ''Manual''.

■ d. In paragraph (n), by adding the words ''or the plant pests for which another treatment schedule is approved in accordance with § 305.2'' after the word ''Manual''.

■ e. By adding a new paragraph (o) to read as set forth below.

§ 305.9 Irradiation treatment requirements.

* * * * *

(o) *Substitution of irradiation for other treatments.* Treatment of fruits and vegetables that are from foreign localities, from Hawaii, Puerto Rico, and the U.S. Virgin Islands, or from domestic areas under quarantine with irradiation in accordance with this section may be substituted for other approved treatments if the target pests of the other approved treatments are approved for treatment with irradiation in the PPQ Treatment Manual or approved for treatment with irradiation in accordance with § 305.2.

* * * * *

Done in Washington, DC, this 23rd day of September 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–25097 Filed 9–28–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Doc. No. AMS–FV–11–0077; FV–983–2 IR]

Pistachios Grown in California, Arizona, and New Mexico; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Administrative Committee for Pistachios (Committee) for the 2011–12 and subsequent production years from $0.0007 to $0.0005 per pound of assessed weight pistachios. The Committee locally administers the marketing order which regulates the handling of pistachios grown in California, Arizona, and New Mexico. Assessments upon pistachio handlers are used by the Committee to fund reasonable and necessary expenses of the program. The production year begins September 1 and ends August 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective September 30, 2011. Comments received by November 28, 2011, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Andrea Ricci, Marketing Specialist or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Andrea.Ricci@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Laurel.May@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 983, both as amended (7 CFR part 983), regulating the handling of pistachios grown in California, Arizona, and New Mexico hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in

conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California, Arizona, and New Mexico pistachio handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable pistachios beginning September 1, 2011, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2011–12 and subsequent production years from $0.0007 to $0.0005 per pound of assessed weight pistachios.

The California, Arizona, and New Mexico pistachio marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California, Arizona, and New Mexico pistachios. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2006–07 production year, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from production year to production year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 21, 2011, and unanimously recommended 2011–12 expenditures of $681,850 and an assessment rate of $0.0005 per pound of pistachios. In comparison, last year's budgeted expenditures were $803,400. The assessment rate of $0.0005 is $0.0002 lower than the rate currently in effect. This action will allow the Committee to provide sufficient revenue to meet its expenses while maintaining a financial reserve within the limit authorized under the order.

The major expenditures recommended by the Committee for the 2011–12 year include $115,850 for administrative expenses, $10,000 for compliance expenses, $281,000 for salaries, $125,000 for research, and $150,000 for a contingency fund. Budgeted expenses for these items in 2010–11 were $112,400 for administrative expenses, $10,000 for compliance expenses, and $281,000 for salaries, $250,000 for a new research and food quality line item budget and $150,000 for a contingency reserve.

The assessment rate recommended by the Committee was derived by considering anticipated expenses and production levels of pistachios grown in California, Arizona, and New Mexico, and additional pertinent factors. In its recommendation, the Committee utilized an estimate of 400 million pounds of assessable pistachios for the 2011–12 production year. If realized, this would provide estimated assessment revenue of $200,000. Additional anticipated revenue will be provided by other sources, including the financial reserve ($369,234), estimated interest income ($2,000), and funds received from the California Pistachio Research Board (CPRB) ($110,616). When combined, revenue from these sources would be adequate to cover budgeted expenses. Any unexpended funds from the 2011–12 production year may be carried over to cover expenses during the succeeding production year. Funds in the reserve at the end of 2011–12 production year are estimated to be approximately $228,037 which would be within the amount permitted in the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each production year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2011–12 budget and those for subsequent production years will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 900 producers of pistachios in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000. Based on Committee data, it is estimated that over 70 percent of the handlers ship less than $7,000,000 worth of pistachios and would thus be considered small business under the SBA definition. It is also estimated that over 80 percent of the growers in the production area produce less than $750,000 worth of pistachios and would thus be considered small businesses under the SBA definition.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2011–12 and subsequent production years from $0.0007 to $0.0005 per pound of assessed weight pistachios. The

Committee unanimously recommended 2011–12 expenditures of $681,850 and an assessment rate of $0.0005 per pound of assessed weight pistachios. The assessment rate of $0.0005 is $0.0002 lower than the 2010–11 rate. The quantity of assessable pistachios for the 2011–12 production year is estimated at 400,000,000 pounds. Thus, the $0.0005 rate should provide $200,000 in assessment income. Income derived from handler assessments combined with the 2010–11 financial reserve, estimated interest income, and funds received from the CPRB is expected to provide sufficient revenues for the Committee to meet its expenses while maintaining a financial reserve within the limit authorized under the order.

The major expenditures recommended by the Committee for the 2011–12 year include $115,850 for administrative expenses, $10,000 for compliance expenses, $281,000 for salaries, $125,000 for research, and $150,000 for a contingency fund. Budgeted expenses for these items in 2010–11 were $112,400 for administrative expenses, $10,000 for compliance expenses, and $281,000 for salaries, $250,000 for a new research and food quality line item budget and $150,000 for a contingency reserve.

The recommended 2011–12 expenditures of $681,850 include a substantial decrease in research expenses and a slight increase in administrative expenses. The Committee discussed alternative expenditure levels, including continuing with the current assessment rate, but determined the lower assessment rate will better allow the Committee to provide sufficient revenue to meet its expenses while maintaining a financial reserve within the limit authorized under the order.

According to NASS, the season average producer price was $1.67 in 2009 and $2.22 per pound of assessed weight pistachios in 2010. A review of historical information and preliminary information pertaining to the upcoming production year indicates that the grower price for the 2011–12 production year could range between $1.67 and $2.22 per pound of assessed weight pistachios. Therefore, the estimated assessment revenue for the 2011–12 production year as a percentage of total producer revenue during the 2011–12 production year could range between 0.030 and 0.023 percent

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California, Arizona, and New Mexico pistachio industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 21, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0215 Pistachios Grown in California. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large California, Arizona, and New Mexico handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying 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.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2011–12 production year begins on September 1, 2011, and the marketing order requires that the rate of assessment for each production year apply to all assessable pistachios handled during such production year; (2) this action decreases the assessment rate for assessable pistachios beginning with 2011–12 production year; (3) handlers are aware of this action which unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of the this rule.

List of Subjects in 7 CFR Part 983

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 983 is amended as follows:

PART 983—PISTACHIOS GROWN IN CALIFORNIA, ARIZONA, AND NEW MEXICO

■ 1. The authority citation for 7 CFR part 983 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 983.253, paragraph (a) is revised to read as follows:

§ 983.253 Assessment rate.

(a) On and after September 1, 2011, an assessment rate of $0.0005 per pound is established for California, Arizona, and New Mexico pistachios.

* * * * *

Dated: September 23, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–25038 Filed 9–28–11; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 702, 725, and 741

RIN 3133–AD87

Net Worth and Equity Ratio

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: On January 4, 2011, President Obama signed Senate Bill 4036 into law, which, among other things, amended the statutory definitions of ''net worth'' and ''equity ratio'' in the Federal Credit Union Act. Through this final rule, NCUA is making conforming amendments to the definition of ''net worth'' as it appears in NCUA's Prompt Corrective Action regulation and the definition of ''equity ratio'' as it appears in NCUA's Requirements for Insurance regulation. NCUA is also making technical changes in other regulations to ensure clarity and consistency in the use of the term ''net worth,'' as it is applied to federally-insured credit unions.

DATES: This rule will become effective on October 31, 2011.

FOR FURTHER INFORMATION CONTACT: Justin M. Anderson, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540 or Karen Kelbly, Chief Accountant, Office of Examination and Insurance, at the above address or telephone at 703–518–6630.

SUPPLEMENTARY INFORMATION:

A. Background

On January 4, 2011, President Obama signed An Act to Clarify the National Credit Union Administration Authority to Make Stabilization Fund Expenditures without Borrowing from the Treasury (the Stabilization Fund Expenditures Act) into law. S. 4036, 111th Cong., Public Law 111–382 (2011). The Stabilization Fund Expenditures Act amended the Federal Credit Union Act (the Act) by clarifying NCUA's authority to make stabilization fund expenditures without borrowing from the Treasury, amending the definitions of ''equity ratio'' and ''net worth,'' and requiring the Comptroller General of the United States to conduct a study on NCUA's handling of the recent corporate credit union crisis. The Stabilization Fund Expenditures Act is divided into four sections, and the amendments in this rule implement the changes made to the Act by sections two and three of the Stabilization Fund Expenditures Act.

B. Proposed Rule

On March 17, 2011, the NCUA Board (the Board) issued a proposed rule to make conforming changes to the definitions of ''net worth'' and ''equity ratio,'' as those terms are used in NCUA's regulations. 76 FR 16345, March 23, 2011. The Board also proposed technical changes to the term ''net worth'' to ensure consistency and accurate accounting treatment in combination transactions. In response, the Board received 15 comments: Two from credit union trade associations; one from a bank trade association; one from a state bank league; four from state credit union leagues; four from federal credit unions; and three from federally insured state chartered credit unions. All of the commenters supported the conforming changes to the definitions of ''net worth'' and ''equity ratio,'' but a majority of the commenters disagreed with the Board's proposed technical correction to the definition of net worth in § 702.2(f)(3) of NCUA's regulation. The proposed technical change, which addresses the acquisition of one credit union by another, requires the subtraction of any bargain purchase gain from the acquired credit union's retained earnings when determining the amount of regulatory capital add-on to be included in the acquirer credit union's post acquisition net worth.

In addition, commenters also addressed other points in the proposed rule, including the differing definitions of ''net worth'' in the Prompt Corrective Action (PCA) and Member Business Loan (MBL) regulations, the inclusion of section 208 assistance in a credit union's net worth, and the public disclosure of credit unions that receive section 208 assistance. Below, the Board discusses each of the topics addressed by the commenters.

C. Summary of Comments

1. Technical Change To ''Net Worth''

Eleven commenters objected to NCUA's technical change to the definition of ''net worth'' in a combination transaction as set forth in proposed § 702.2(f)(3). The proposed change requires the subtraction of any bargain purchase gain from an acquired credit union's retained earnings before the latter amount is included in the net worth of the acquiring credit union. This proposed correction also limits the difference between the added retained earnings and bargain purchase gain to an amount that is zero or more, which would prevent a retained earnings deficit from flowing forward to the acquiring institution. Finally, this proposed revision adds a requirement that the retained earnings of the acquired credit union at the point of acquisition be measured under Generally Accepted Accounting Procedures (GAAP) as referenced in the Act. 12 U.S.C. 1790d(o)(2)(A).

All of the commenters objecting to this change cited at least one of three reasons. First, six commenters believed this change would have a chilling effect or act as a disincentive to credit unions interested in merging. The Board, however, notes that most mergers will be unaffected by this change. For the majority of credit union mergers, the resulting component is in the form of goodwill rather than bargain purchase gain. In those situations, this change will have no effect on the transaction. For those few mergers that this change will impact, the Board believes the impact will be minimal and will not create any disincentive to mergers as it duplicates the regulatory capital result achieved under the old pooling method. In responding to these comments, NCUA staff looked at recent mergers to evaluate the impact this change would have had on those transactions. Of the mergers reviewed, which resulted in a bargain purchase gain, none would have resulted in a significant decrease in net worth because of the technical correction. To illustrate this point, the Board notes that, of the mergers reviewed, the sharpest decline in net worth was from a net worth of 12.93% under the current rule to a net worth of 12.46% with the technical correction.

Second, six commenters also stated that this change is contrary to GAAP and would put acquiring credit unions in a worse financial position than they otherwise would have been had the transaction been accounted for under GAAP. The Board agrees with commenters that GAAP should govern the financial reporting of merger transactions and notes that this technical correction does not change the requirement for credit unions to report merger transactions in accordance with GAAP. This technical correction ensures that an acquiring credit union's regulatory capital does not achieve a double benefit through a bargain purchase gain, which is not contrary to GAAP accounting.

Finally, eight commenters stated that this change is contrary to the purpose and intent of the 2006 Financial Services Relief Act (2006 Relief Act). The 2006 Relief Act amended the FCU Act by defining ''net worth'' as including ''the retained earnings balance of the credit union, as

determined under generally accepted accounting procedures, together with any amounts that were previously retained earnings of any credit union with which the credit union has combined.'' Public Law 709–351, section 504 (2006), 12 U.S.C. 1790d(o)(2)(A). The expanded definition permitted the acquiring credit union to ''follow the new Financial Accounting Standards Board (FASB) rule while still allowing the capital of both credit unions to flow forward as regulatory capital and thus preserve the incentive for desirable credit union mergers.'' Staff of Senate Comm. on Banking, Housing and Urban Affairs, 109th Cong., *Section-By-Section Analysis of Financial Services Regulatory Relief Act of 2006* (Comm. Print 2006) at 3. By duplicating the regulatory capital measure previously obtained under the pooling method of accounting, the 2006 Relief Act eliminated the regulatory capital disincentive caused by changes to the FASB rules. The technical change proposed by the Board retains the forward flow of the capital of both the acquired and acquiring credit unions, but removes the double counting of the acquired credit union's capital caused by the accounting treatment of bargain purchase gain. The Board's proposed technical correction, therefore, is consistent with Congress' objective in the 2006 Relief Act. The following hypothetical example illustrates how the technical correction is in line with Congress' intent:

TABLE 1—HYPOTHETICAL EXAMPLE

Target's balance sheet	Book value	Fair value
Assets	$475,000	$500,000
Liabilities	348,000	350,000
Equity:		
Retained Earnings	127,000	.....
Acquired Equity	.....	125,000
Bargain Purchase Gain	.....	25,000
Liabilities & Equity	475,000	500,000
Acquirer's Retained Earnings	250,000	.....

TABLE 2—COMPARISON OF ACQUIRER'S REGULATORY CAPITAL OUTCOMES

	Under old pooling	Under current rule w/BPG	With technical amendment
Acquirer's Retained Earnings Under GAAP	$250,000	$275,000	$275,000
Target's Regulatory Capital Add-on:			
PreMerger Retained Earnings	127,000	127,000	127,000
Less: Bargain Purchase Gain	.....	.....	(25,000)
Net Worth (Regulatory Capital)	377,000	402,000	377,000

Based on the discussion above and for the reasons articulated in the proposed rule (*see* 76 FR 16345, March 23, 2011), the Board is retaining the technical change in this final rule that requires the subtraction of any bargain purchase gain from the acquired credit union's retained earnings before the latter amount is included in the acquirer's net worth. A technical change to a reference in Part 725 is also made due to a realignment of definitions in Part 700.

2. Consistent Definition of ''Net Worth''

Four commenters objected to the use of a different definition of ''net worth'' in the MBL and PCA regulations. These commenters stated that the differing definitions were unfair and would likely cause confusion among credit unions. As noted in the proposed rule, the differing definitions are based on the definitions of ''net worth'' used in the sections of the Act addressing MBLs and PCA. *See* 76 FR 16345, March 23, 2011 and 12 U.S.C. 1757a(c)(2) and 1790d(o)(2). The differing definitions of net worth for MBLs and PCA in NCUA's regulations reflect the corresponding differing definitions in the Act. As such, the Board cannot use the same definition of ''net worth'' in the MBL and PCA regulations without a statutory change.

3. Clarification of Section 208 Assistance

The Board received four comments seeking clarification on when 208 assistance can be counted as net worth. Section 208 of the Act allows the Board, in its discretion, to make loans to, or purchase the assets of, or establish accounts in insured credit unions the Board has determined are in danger of closing or in order to assist in the voluntary liquidation of a solvent credit union. 12 U.S.C. 1788(a)(1). Two commenters stated that it was Congress' intent to limit when section 208 assistance may be counted as net worth to only those situations when the Board provides the assistance to facilitate a merger between a healthy and a failed credit union. These commenters cited a portion of the Stabilization Fund Expenditures Act, which states that section 208 assistance may be counted as net worth when it is provided by the Board ''to facilitate a least cost resolution.'' 111 Public Law 382, 124 Stat. 4134 (2011). These commenters believe that the phrase ''facilitate a least cost resolution'' limits when section 208 assistance may be considered net worth to only those situations where it is provided to facilitate a merger. In contrast, two other commenters stated that section 208 assistance counted as net worth should not be restricted to only those situations involving a merger. These other commenters also cited the statutory amendments and argued that the Stabilization Fund Expenditures Act does not contain explicit limitations on when section 208 assistance can be included in a credit unions net worth, but rather provides the Board with a high level of discretion on when to use section 208 assistance as net worth. *Id.*

After considering the comments and revisiting the language of the statutory amendments, the Board concurs with the commenters who stated that section 208 assistance as net worth should not be limited to only those instances when a merger is involved. As those commenters pointed out, there is nothing in the statutory change that states that section 208 assistance can only be counted as net worth when a

merger is involved. In fact, when read as a whole, the Act, as amended by the Stabilization Fund Expenditures Act, addresses net worth in the context of a merger and in the context of section 208 assistance in different sections. Specifically, section 216(o)(2)(A) of the Act defines net worth of a credit union in a combination transaction and section 216(o)(2)(B) of the Act separately defines net worth with respect to section 208 assistance. 12 U.S.C. 1790d(o)(2)(A) and (B). The Board believes that this statutory construction as well as the absence of limiting language in the Stabilization Fund Expenditures Act supports the conclusion that defining section 208 assistance as net worth is not limited to situations only involving a merger. The Board, therefore, is clarifying that section 208 assistance can be counted in a credit union's net worth subject only to those limitations contained in the rule text and is not limited only to merger transactions.

4. Section 208 Assistance on the 5300

Finally, three commenters requested that NCUA include a separate line item on the 5300 Call Report for reporting section 208 assistance received by a credit union. These commenters cited transparency and accountability as reasons for the inclusion of section 208 assistance on the 5300 Call Report. NCUA has previously declined to make information about credit unions receiving section 208 assistance public because there is a strong possibility that members may perceive receipt of section 208 assistance to indicate a weak and unstable credit union. Further, this information would also be exempt from public disclosure pursuant to Exemption 8 of the FOIA.[1] While the Board is dedicated to transparency in its operations, this dedication must also be balanced with the safety and soundness of the credit union industry. As such, the Board continues to agree with this rationale for not publicly releasing information on credit unions that receive section 208 assistance and will not include a separate line item on the 5300 Call Report for the disclosure of section 208 assistance.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under $10 million in assets). This final rule modifies the definition of ''net worth'' and ''equity ratio,'' and will not have a significant economic impact on a substantial number of small credit unions and a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Public Law 104–121, provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Information and Regulatory Affairs, an office within the Office of Management and Budget, is currently reviewing this rule, and NCUA anticipates it will determine that, for purposes of SBREFA, this is not a major rule.

Paperwork Reduction Act

NCUA has determined that the final amendments will not increase paperwork requirements and a paperwork reduction analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Parts 700, 701, 702, 725, and 741

Bank deposit insurance, Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on September 22, 2011.

Mary Rupp,

Secretary of the Board.

For the reasons stated in the preamble, the National Credit Union Administration amends 12 CFR parts 700, 701, 702, 725, and 742 as set forth below:

PART 700—DEFINITIONS

■ 1. The authority citation for part 700 continues to read as follows:

Authority: 12 U.S.C. 1752, 1757(6) and 1766.

■ 2. In § 700.2:

■ a. Remove the alphabetical paragraph designations,and add in alphabetical order a definition for ''net worth''; and

■ b. In the definition of ''insolvency,'' transfer paragraph designation (1) to follow the term.

The addition reads as follows:

§ 700.2 Definitions.

* * * * *

Net worth. Unless otherwise noted, the term ''net worth,'' as applied to credit unions, has the same meaning as set forth in § 702.2(f) of this chapter.

* * * * *

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 3. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 4. Revise § 701.21(h)(4)(iv) to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(h) * * *

(4) * * *

(iv) The term ''net worth'' means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles and as further defined in § 702.2(f) of this chapter.

* * * * *

[1] Exemption 8 of the FOIA exempts from disclosure information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. 5 U.S.C. 552(b)(8).

PART 702—PROMPT CORRECTIVE ACTION

■ 5. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790(d).

■ 6. In 702.2, revise paragraph (f)(3) and add paragraph (f)(4) to read as follows:

§ 702.2 Definitions.

* * * * *

(f) * * *

(3) For a credit union that acquires another credit union in a mutual combination, net worth includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, less any bargain purchase gain recognized in either case to the extent the difference between the two is greater than zero. The acquired retained earnings must be determined at the point of acquisition under generally accepted accounting principles. A mutual combination is a transaction in which a credit union acquires another credit union or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union.

(4) The term ''net worth'' also includes loans to and accounts in an insured credit union established pursuant to section 208 of the Act [12 U.S.C. 1788], provided such loans and accounts:

(i) Have a remaining maturity of more than 5 years;

(ii) Are subordinate to all other claims including those of shareholders, creditors and the National Credit Union Share Insurance Fund;

(iii) Are not pledged as security on a loan to, or other obligation of, any party;

(iv) Are not insured by the National Credit Union Share Insurance Fund;

(v) Have non-cumulative dividends;

(vi) Are transferable; and

(vii) Are available to cover operating losses realized by the insured credit union that exceed its available retained earnings.

* * * * *

PART 725—NATIONAL CREDIT UNION ADMINISTRATION CENTRAL LIQUIDITY FACILITY

■ 7. The authority citation for part 725 continues to read as follows:

Authority: Secs. 301–307 Federal Credit Union Act, 92 Stat. 3719–3722 (12 U.S.C. 1795–1795f).

§ 725.18 [Amended]

■ 8. In § 725.18, amend paragraph (c) by removing the words ''by § 700.2(e)(1)'' and adding in its place the words ''in paragraph (1) to the definition of ''insolvency in § 700.2''.

PART 741—REQUIREMENTS FOR INSURANCE

■ 9. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 10. In § 741.4, in paragraph (b), revise the introductory text to the definition of ''equity ratio'' to read as follows:

§ 741.4 Insurance premium and one percent deposit.

* * * * *

(b) * * *

Equity ratio, which shall be calculated using the financial statements of the NCUSIF alone, without any consolidation or combination with the financial statements of any other fund or entity, means the ratio of:

* * * * *

[FR Doc. 2011–24907 Filed 9–28–11; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0218; Directorate Identifier 2009–CE–006–AD; Amendment 39–16820; AD 2009–13–06 R1]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are revising an existing airworthiness directive (AD) for certain Piper Aircraft, Inc. Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–23–250 (Navy UO–1), PA–E23–250, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31P–350, PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–42, PA–42–720, and PA–42–1000 airplanes that are equipped with a baggage door in the fuselage nose section (a nose baggage door). That AD currently establishes life limits and replacement requirements for safety-critical nose baggage door components and repetitive inspections and lubrication of the nose baggage door latching mechanism and lock assembly. This new AD removes the requirement for the nose baggage door compartment interior light inspection and retains the other requirements from AD 2009–13–06, Amendment 39–15944. This AD was prompted by further investigation and a request for an alternative method of compliance (AMOC). We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective November 3, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 24, 2009 (74 FR 29118, June 19, 2009).

ADDRESSES: For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; Internet: *http://www.newpiper.com/company/publications.asp.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Gregory K. Noles, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5551; fax: (404) 474–5606; e-mail: *gregory.noles@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to revise AD 2009–13–06, amendment 39–15944 (74 FR 29118, June 19, 2009). That AD applies to the specified products. The NPRM published in the **Federal Register** on May 20, 2011 (76 FR 29176). That NPRM proposed to continue to require establishment of life limits for safety-critical nose baggage door components. That NPRM also proposed to continue to require replacement of those safety-critical nose baggage door components

and repetitive inspections and lubrications of the nose baggage door latching mechanism and lock assembly. The NPRM also proposed to remove the requirement for the nose baggage door compartment interior light inspection.

Comments

We gave the public the opportunity to participate in developing this AD. Ed Keith of Wright Air Service, the Aircraft Owners and Pilots Association, Gary King, and several others commented that they support the NPRM. The following presents a comment received on the proposal and the FAA's response to the comment:

Revised Compliance Time

Ben Stevens and another commenter requested we revise the compliance time in paragraph (f)(2) for the repetitive interval to allow for a 10 percent (110 hours) overrun for return to a maintenance base for inspection. The commenters stated this would match program extensions for aircraft that are in for-hire or instructional usage per 14 CFR 91.409(b) and that similar allowance had been allowed in other ADs.

We agree with this comment because the requested extension provides an acceptable level of safety for this class of aircraft. We revised paragraph (f)(2) of this AD to include the following text: ''Initially within 100 hours TIS after July 24, 2009 (the effective date retained from AD 2009–13–06, amendment 39–15944 (74 FR 29118, June 19, 2009); and repetitively thereafter at intervals of 100 hours TIS. The 100-hour interval may be exceeded by not more than 10 hours TIS to reach a place where the inspection can be done, per 14 CFR 91.409(b). The excess time used to reach a place where the inspection can be done must be included in computing the next 100 hours of TIS.''

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 8,000 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and parts replacement of nose baggage door.	4 work-hours × $85 per hour = $340	$190	$530	$4,240,000

The new requirements of this AD add no additional economic burden. The increased estimated cost of this AD is due to increased labor cost from 2009 when AD 2009–13–06, amendment 39–15944 (74 FR 29118, June 19, 2009) was issued.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive AD 2009–13–06, amendment 39–15944 (74 FR 29118, June 19, 2009), and adding the following new AD:

2009–13–06 R1 Piper Aircraft, Inc.: Amendment 39–16820; Docket No. FAA–2009–0218; Directorate Identifier 2009–CE–006–AD.

(a) Effective Date

This airworthiness directive (AD) is effective November 3, 2011.

(b) Affected ADs

This AD revises AD 2009–13–06, amendment 39–15944 (74 FR 29118, June 19, 2009).

(c) Applicability

This AD applies to Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–23–250 (Navy UO–1), PA–E23–250, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31P–350, PA–31T, PA–31T1, PA–31T2, PA–

31T3, PA–42, PA–42–720, and PA–42–1000 airplanes, all serial numbers, that are:

(1) Certificated in any category; and

(2) Equipped with a baggage door in the fuselage nose section (a nose baggage door).

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code, 52, Doors.

(e) Unsafe Condition

This AD was prompted by several incidents and accidents, including fatal accidents, where the nose baggage door opening in flight was listed as a causal factor. We are issuing this AD to establish life limits for safety-critical nose baggage door components, replace those safety-critical nose baggage door components, and repetitively inspect and lubricate the nose baggage door latching mechanism and lock assembly. The door opening in flight could significantly affect the handling and performance of the aircraft. It could also allow baggage to be ejected from the nose baggage compartment and strike the propeller. This failure could lead to loss of control.

(f) Compliance

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

Actions	Compliance	Procedures
(1) For all aircraft: (i) Inspect the nose baggage door assembly for damaged, worn, corroded, or non-conforming components; (ii) Replace life-limited components specified in the service information; and (iii) Install or inspect, as applicable, the nose baggage placard following the service information.	Initially within 1,000 hours time-in-service (TIS) since all life-limited components were installed new following Piper Aircraft, Inc. Mandatory Service Bulletin No. 1194A, dated November 10, 2008, or within the next 100 hours TIS after July 24, 2009 (the effective date retained from AD 2009–13–06, amendment 39–15944 (74 FR 29118, June 19, 2009), whichever occurs later. Repetitively thereafter at intervals not to exceed 1,000 hours TIS.	Follow INSTRUCTIONS: PART I of Piper Aircraft, Inc. Mandatory Service Bulletin No. 1194A, dated November 10, 2008. As an alternative to using the part number 100700–079 placard, you may fabricate a placard (using at least 1/8-inch letters) with the words in figure 1 of this AD and install the placard directly above the nose baggage door handle. This AD does not require the verification of proper functioning of the nose baggage compartment interior light set forth in the last sentence of PART 1, paragraph 1, of Piper Aircraft, Inc. Mandatory Service Bulletin No. 1194A, dated November 10, 2008.
(2) For all aircraft: (i) Lubricate and inspect all nose baggage door latching and locking components for damaged, worn, corroded, or non-conforming components; and (ii) Verify the key can only be removed from the lock assembly in the locked position in accordance with the service instructions.	Initially within 100 hours TIS after July 24, 2009 (the effective date retained from AD 2009–13–06, amendment 39–15944 (74 FR 29118, June 19, 2009); and repetitively thereafter at intervals of 100 hours TIS. The 100-hour interval may be exceeded by not more than 10 hours TIS to reach a place where the inspection can be done, per 14 CFR 91.409(b). The excess time used to reach a place where the inspection can be done must be included in computing the next 100 hours of TIS.	Follow INSTRUCTIONS: PART II of Piper Aircraft, Inc. Mandatory Service Bulletin No. 1194A, dated November 10, 2008.
(3) For all aircraft with damaged, worn, corroded, or non-conforming components: Repair/replace any damaged, worn, corroded, or non-conforming components.	Before further flight after any inspection required in paragraphs (f)(1) and (f)(2) of this AD where any evidence of damaged, worn, corroded or non-conforming components was found.	Follow Piper Aircraft, Inc. Mandatory Service Bulletin No. 1194A, dated November 10, 2008.

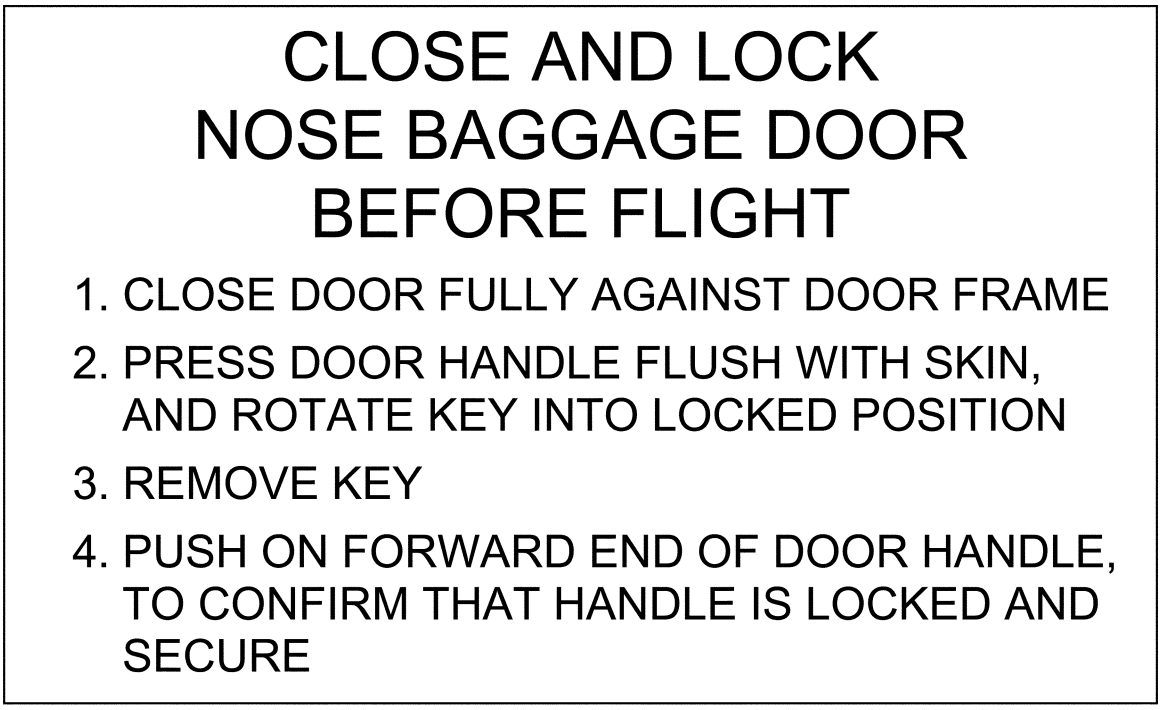


Figure 1 – Nose Baggage Door Placard.

(g) Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved for AD 2009–13–06, amendment 39–15944 (74 FR 29118, June 19, 2009) are approved as AMOCs for this AD. The format has been revised and certain paragraphs have been rearranged since AD 2009–13–06 was issued, including changes to paragraph identifiers in this AD. Previous AMOCs may refer to particular paragraph identifiers from the original AD, however, the corresponding actions of the AMOC in the revised AD still apply even though the identifiers have changed.

(h) Related Information

For more information about this AD, contact Gregory K. Noles, Aerospace Engineer, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5551; fax: (404) 474–5606; e-mail: *gregory.noles@faa.gov.*

(i) Material Incorporated by Reference

(1) You must use Piper Aircraft, Inc. Mandatory Service Bulletin No. 1194A, dated November 10, 2008, to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 on July 24, 2009 (74 FR 29118, June 19, 2009).

(2) For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; Internet: *http://www.newpiper.com/company/publications.asp.*

(3) You may review copies of the referenced service information at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–3768.

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

Issued in Kansas City, Missouri on September 20, 2011.

Wes Ryan,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–25008 Filed 9–28–11; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201, and 204

[Release No. 34–65385]

Consolidation of the Office of the Executive Director With the Office of the Chief Operating Officer

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is amending its rules to reflect the consolidation of the Office of the Executive Director with the Office of the Chief Operating Officer, including amendments to replace references to the Executive Director with references to the Chief Operating Officer.

DATES: *Effective Date:* September 29, 2011.

FOR FURTHER INFORMATION CONTACT: Jeffery Heslop, Chief Operating Officer, at (202) 551–2105, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Discussion

Until recently, the support functions of the Commission were allocated primarily to the Office of the Executive Director (''OED''). In 2010, however, the Commission established the Office of

the Chief Operating Officer (''OCOO'') and allocated some support and administrative functions to OCOO. Then, on April 19, 2011, the Commission approved the consolidation of the OED with the OCOO in an effort to streamline the organizational structure of the agency and add clarity and efficiency to the functions of the Chief Operating Officer.

These amendments harmonize the Commission's rules with the consolidation already approved by replacing references to the Executive Director with references to the Chief Operating Officer. These include references to the Executive Director in rules describing the responsibilities of the Executive Director and officers serving under the Executive Director; rules delegating authority to the Executive Director and officers serving under the Executive Director; and rules relating to the classification and declassification of national security information and material. As a result of these amendments, these rules now will apply to the Chief Operating Officer and officers serving under the Chief Operating Officer, as applicable.

The amendments also make conforming changes to Commission rules relating to the offices that report to the OCOO. They amend provisions relating to the Office of the Comptroller to reflect that this office is now known as the Office of Financial Management and headed by the Chief Financial Officer. They amend provisions relating to the Office of Administrative and Personnel Management to reflect that the functions of this office are now performed by the Office of Human Resources and the Office of Administrative Services. They amend provisions relating to the former Office of Freedom of Information and Privacy Act Operations to reflect that this Office is now known as the Office of FOIA, Records Management, and Security. And, they remove a reference to the Office of Filings and Information Services, to reflect that this Office no longer exists.

Finally, the amendments would remove from the description of the functions of the COO (previously the description of the functions of the Executive Director) the functions of prescribing procurement regulations, entering into contracts, designating contracting officers, and making procurement determinations. We believe it is appropriate to retain for the Chairman the flexibility to designate the person or persons who shall perform these functions, rather than to specify by rule that these functions are allocated to the COO.

II. Related Matters

A. Administrative Procedure Act and Other Administrative Laws

The Commission has determined that these amendments to its rules relate solely to the agency's organization, procedure, or practice. Accordingly, the provisions of the Administrative Procedure Act regarding notice of proposed rulemaking and opportunity for public participation are not applicable.[1] The Regulatory Flexibility Act, therefore, does not apply.[2] Because these rules relate solely to the agency's organization, procedure, or practice and do not substantially affect the rights or obligations of non-agency parties, they are not subject to the Small Business Regulatory Enforcement Fairness Act.[3] Finally, these amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[4]

B. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The amendments adopted today are procedural in nature and will produce the benefit of facilitating the efficient operation of the Commission. The Commission also believes that these rules will not impose any costs on non-agency parties, or that if there are any such costs, they are negligible.

C. Consideration of Burden on Competition

Section 23(a)(2) of the Exchange Act requires the Commission, in making rules pursuant to any provision of the Exchange Act, to consider among other matters the impact any such rule would have on competition. The Commission does not believe that the amendments that the Commission is adopting today will have any impact on competition because they impose no new burden upon market participants and are intended to facilitate the efficient operation of the Commission.

Statutory Authority

The amendments to the Commission's rules are adopted pursuant to 15 U.S.C. 77o, 77s, 77sss, 77d, 78d–1, 78d–2, 78w, 78ll(d), 78mm, 80a–37, 80b–11, and 7202.

[1] 5 U.S.C. 553(b).

[2] 5 U.S.C. 601–612.

[3] 5 U.S.C. 804.

[4] 44 U.S.C. 3501–3520.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

17 CFR Part 201

Administrative practice and procedure, Brokers, Claims, Confidential business information, Equal access to justice, lawyers, Penalties, Securities.

17 CFR Part 204

Claims, Government employees, Income taxes, Reporting and recordkeeping requirements, Wages.

Text of Amendments

In accordance with the preamble, the Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

■ 1–2. The authority citation for Part 200, Subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 77d, 78d–1, 78d–2, 78w, 78ll(d), 78mm, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

■ 3. In 17 CFR Part 200, remove the words ''Executive Director'' and add, in their place, the words ''Chief Operating Officer'' in the following places:

■ a. Section 200.13, heading and paragraphs (a) introductory text, (b), and (c);

■ b. Section 200.17, introductory text;

■ c. Section 200.21(a);

■ d. Section 200.30–3(a)(80);

■ e. Section 200.30–15, heading and text;

■ f. Section 200.503, introductory text and paragraph (a);

■ g. Section 200.504, introductory text;

■ h. Section 200.505(c);

■ i. Section 200.508(a);

■ j. Section 200.510(a); and

■ k. Section 200.511(a).

§ 200.13 [Amended]

■ 4. In § 200.13:

■ a. In paragraph (a), remove the phrase ''the Office of Administrative and Personnel Management, the Office of the Comptroller, the Office of Filings and Information Services, the Office of Freedom of Information and Privacy Act Operations'' and add, in its place, the

phrase ''the Office of Human Resources, the Office of Administrative Services, the Office of Financial Management, the Office of FOIA, Records Management, and Security'';

■ b. In paragraph (c), remove the phrase '', prescribes procurement regulations, enters into contracts, designates contracting officers, and makes procurement determinations'' and add a period after the word ''payments''.

■ c. In paragraph (d), remove the phrase ''As the Chief Operating Officer of the Commission, the Executive Director'' and add, in its place, the phrase ''The Chief Operating Officer'';

§ 200.20c [Removed]

■ 5. Remove § 200.20c.

§ 200.21 [Amended]

■ 6. In § 200.21(a), remove the words ''Office of Administrative and Personnel Management'' and add, in their place, the words ''Office of Human Resources''.

§ 200.24 [Amended]

■ 7. In § 200.24:

■ a. Remove the words ''Office of the Comptroller'' in the heading and add, in their place, the words ''Office of Financial Management'';

■ b. Remove the words ''Associate Executive Director of the Office of the Comptroller'' and add, in their place, the words ''Chief Financial Officer''; and

■ c. Remove the words ''Executive Director'' and add, in their place, the words ''Chief Operating Officer'';

§ 200.25 [Removed and Reserved]

■ 8. Remove and reserve § 200.25.

§ 200.30–13 [Amended]

■ 9. In § 200.30–13 remove the words ''Associate Executive Director of the Office of Financial Management'' in the heading and introductory text and add, in their place, the words ''Chief Financial Officer''.

Subpart J—Classification and Declassification of National Security Information and Material

■ 10a. The authority citation for Part 200, Subpart J, is revised to read as follows:

Authority: 15 U.S.C. 77s; 11 U.S.C. 901, 1109(a); E.O. 12356, 47 FR 14874, Apr. 6, 1982; Information Security Oversight Office Directive No. 1 (47 FR 27836, June 25, 1982).

§ 200.503 [Amended]

■ 10b. In § 200.503, remove the authority citation following Section 503(b).

PART 201—RULES OF PRACTICE

■ 11. The authority citation for Part 201 is revised to read as follows:

Authority: 15 U.S.C. 77s, 77sss, 78w, 78x, 80a–37, and 80b–11; 5 U.S.C. 504(c)(1).

Sections 201.700 and 201.701 are also issued under sec. 916, Pub. L. 111–203, 124 Stat. 1376.

* * * * *

§ 201.59 [Amended]

■ 12. In § 201.59, remove the word ''Comptroller'' and add, in its place, the words ''Chief Financial Officer''.

PART 204—RULES RELATING TO DEBT COLLECTION

Subpart B

■ 13. The authority citation for Part 204, Subpart B, continues to read as follows:

Authority: 5 U.S.C. 5514, 5 CFR 550.1104.

§ 204.32 [Amended]

■ 14. In § 204.32, in the definition of *Program Official,* remove the word ''Comptroller'' and add, in its place, the words ''Chief Financial Officer''.

§ 204.34 [Amended]

■ 15. In § 204.34(d), remove the words ''Comptroller's office'' and add, in their place, the words ''Office of Financial Management''.

Dated: September 23, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24964 Filed 9–28–11; 8:45 am]

BILLING CODE 8011–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 217

RIN 3220–AB64

Application for Annuity or Lump Sum

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to allow alternative signature methods in addition to the traditional pen-and-ink or ''wet'' signature in order to implement an electronic application process which will eventually eliminate the need to retain paper applications and make the application process more convenient for the individuals filing applications.

DATES: This rule will be effective September 29, 2011.

ADDRESSES: Martha P. Rico, Secretary to the Board, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 5(b) of the Railroad Retirement Act (RRA) [45 U.S.C. 231d(b)] provides that an application for any payment under the Act ''shall be made and filed in such manner and form as the Board may prescribe * * *'' Currently, Part 217 of the Board's regulations, which sets out the rules governing applications made under the RRA, anticipates that an application will include a signature on paper, even where the application itself may be completed electronically.

In order to provide better service to our customers, the Board amends § 217.17 of its regulations in order to allow signature alternatives to the traditional pen-and-ink (''wet'') signature. The Board changes the current title of § 217.17, ''Who may sign an application'' to ''What is an acceptable signature'' and adds a new subsection (f) to describe what may be considered to be an acceptable signature. The amendment adds two different types of acceptable signatures.

The first alternate method of signature that the amendment to § 217.17 allows is the use of a personal identification number (PIN) assigned by the agency. The second alternate method is referred to as an ''alternative signature'' or ''signature proxy.'' The purpose of this amendment is to allow signature by attestation. Attestation refers to an action taken by an employee of the Railroad Retirement Board (RRB) to confirm and annotate the RRB records of (1) An applicant's intent to file or complete an application or related form, (2) the applicant's affirmation under penalty of perjury that the information is correct, and (3) the applicant's agreement to sign the application or related form. The Board expects that use of attestation to take RRA applications over the telephone will increase efficiency and be more convenient for RRB customers.

Before deciding to propose this amendment, the Board's Office of Programs obtained information about alternative signature methods used by the Social Security Administration (SSA), since it administers a retirement and disability program comparable to the Board's programs under the Railroad Retirement Act. The Office of Programs also compared the current RRB application taking process with a process using attestation to identify the differences and determine how those

differences affect the process. Based on the information obtained from the comparison and from the SSA, it was determined that attestation will reduce our paper flow and handling and will work well in our current environment where the Board's Field Service already completes most applications by telephone.

Under both the current and amended systems, the RRB claims representative will identify a caller-applicant using our existing protocol and complete an application by interviewing the caller and entering the answers online into the Application Express (APPLE) system. APPLE is an online system that automates the filing of applications for retirement and survivor benefits and forwards the applications to the systems for payment. We now print out a copy of the completed application to send it to the applicant for signature and return. Under attestation, we will instead use defined scripts like SSA uses to confirm the applicant's intent to file; attest to the reply by entering the answer in APPLE; print the cover notice with penalty clause and summary, and review it with the applicant over the telephone; release the case in APPLE for processing after the telephone review of the cover notice is complete; and send the applicant a cover notice and summary to keep. We will advise the applicant to review the cover notice and summary upon receipt, and contact the RRB promptly if the applicant needs to make any corrections.

Attestation will end the return of application documents to our offices, reducing the volume of paper to be sorted, assigned, reviewed, input, scanned and indexed by the RRB.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866, as amended. Therefore, no regulatory impact analysis is required. There are no changes to the information collections associated with Part 217.

List of Subjects in 20 CFR Part 217

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, chapter II, subchapter B, part 217 of the Code of Federal Regulations as follows:

PART 217—APPLICATION FOR ANNUITY OR LUMP SUM

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 45 U.S.C. 231d and 45 U.S.C. 231f.

■ 2. Section 217.17 is amended by revising the section heading and paragraph (a) and adding paragraph (f) to read as follows:

§ 217.17 What is an acceptable signature.

* * * * *

(a) A claimant who is 18 years old or older, competent (able to handle his or her own affairs), and physically able to sign the application, must sign in his or her own handwriting, except as provided in paragraph (e) or paragraph (f) of this section. A parent or a person standing in place of a parent must sign the application for a child who is not yet 18 years old, except as shown in paragraph (d) of this section.

* * * * *

(f) An acceptable signature may include:

(1) A handwritten signature that complies with the rules set out in paragraphs (a), (b), (c), (d), or (e) of this section; or

(2) In the case of an application being taken and processed in the Railroad Retirement Board's automated claims system, an electronic signature, which shall consist of a personal identification number (PIN) assigned by the Railroad Retirement Board as described in the application instructions; or

(3) An alternative signature or signature proxy acceptable to the Railroad Retirement Board. An example of an alternative signature is attestation, which refers to the action taken by a Railroad Retirement Board (RRB) employee of confirming and annotating RRB records of the applicant's intent to file or complete an application or related form, the applicant's affirmation under penalty of perjury that the information provided is correct, and the applicant's agreement to sign the application or related form.

Dated: September 23, 2011.

By Authority of the Board.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2011–25108 Filed 9–28–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9545]

RIN 1545–BG75

Interest and Penalty Suspension Provisions Under Section 6404(g) of the Internal Revenue Code

Correction

In rule document number 2011–21164 beginning on page 52259 through 52263 in the issue of August 22, 2011, make the following corrections:

301.6404–4 [Corrected]

■ 1. On page 52262 in the second column, in § 301.6404–4(a)(7)(i) third paragraph, 15 lines from the bottom, the words ''or Form 886–A'' were inadvertently printed in italics. The words should not have been italicized, and are corrected as follows, ''Form 886–A.''

■ 2. On page 52263 in the third column, in § 301.6404–4(c)(2)(ii) 11 lines down, article number two (ii) was printed on a separate line, above the word ''Example.'' It should appear directly next to the word ''Example.'' It is corrected to appear as follows: (ii) Example.

[FR Doc. C1–2011–21164 Filed 9–28–11; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0719–201144; FRL–9472–2]

Approval and Promulgation of Air Quality Implementation Plans; Ohio, Kentucky, and Indiana; Cincinnati-Hamilton Nonattainment Area; Determinations of Attainment of the 1997 Annual Fine Particulate Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the tri-state Cincinnati-Hamilton, Ohio-Kentucky-Indiana, fine particulate ($PM_{2.5}$) nonattainment Area (hereafter referred to as ''the Cincinnati Area'' or ''Area'') has attained the 1997 annual average $PM_{2.5}$ national ambient air quality standards (NAAQS) and additionally, that the Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its

applicable attainment date of April 5, 2010. The Cincinnati Area is comprised of Butler, Clermont, Hamilton, and Warren Counties in Ohio; Boone, Campbell and Kenton Counties in Kentucky; and a portion of Dearborn County in Indiana. These determinations of attainment are based upon quality-assured and certified ambient air monitoring data for the 2007–2009 period showing that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. The requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standard shall be suspended so long as the Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS.

DATES: *Effective Date:* This final rule is effective on October 31, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R04–OAR–2010–0719. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

FOR FURTHER INFORMATION CONTACT: In Region 4, Joel Huey or Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Huey's telephone number is (404) 562–9104. Mr. Huey can also be reached via electronic mail at *huey.joel@epa.gov.* Ms. Waterson may be reached by phone at (404) 562–9061 or via electronic mail at *waterson.sara@epa.gov.* In Region 5, John Summerhays, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507. Mr. Summerhays' telephone number is (312) 886–6067. Mr. Summerhays can also be reached via electronic mail at *summerhays.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What actions is EPA taking?
II. What are the effects of these actions?
III. What are EPA's final actions?
IV. Statutory and Executive Order Reviews

I. What actions is EPA taking?

EPA is determining that the Cincinnati Area (comprised of Butler, Clermont, Hamilton, and Warren Counties in Ohio; Boone, Campbell and Kenton Counties in Kentucky; and a portion of Dearborn County in Indiana) has attained the 1997 annual $PM_{2.5}$ NAAQS. This determination is based upon quality-assured, quality-controlled and certified ambient air monitoring data that shows the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS based on the 2007–2009 data and is continuing to attain with 2008–2010 data. EPA is also determining, in accordance with EPA's $PM_{2.5}$ Implementation Rule of April 25, 2007 (72 FR 20664), that the Cincinnati Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010.

Other specific requirements of the determination and the rationale for EPA's action are explained in the notice of proposed rulemaking (NPR) published on June 3, 2011 (76 FR 32110). For summary purposes, the Cincinnati Area did not meet the 75 percent completeness criteria in three cases. The Northern Kentucky University site began operation on August 1, 2007, and thus did not obtain complete data for the first three quarters of 2007. This would not be considered an incomplete record due to it being a new site. Nevertheless, the average concentration for the remainder of 2007 and all of 2008 and 2009 was 12.5 micrograms per meter cubed ($\mu g/m^3$). Scarlet Oaks School ended operation December 31, 2008 and Hook Field Airport ended operation December 31, 2007. The Scarlet Oaks School site monitored an average concentration of 14.8 $\mu g/m^3$ in 2007, and an annual average concentration in 2008 of 13.3 $\mu g/m^3$. The Hook Field Airport site monitored an annual average concentration of 14.6 $\mu g/m^3$ for 2007. These values are below the NAAQS. The complete 2010 year had not been certified at the time of the NPR; therefore, the data were not considered complete for 2010. All of the 2008–2010 design values are below 15.0 $\mu g/m^3$, except for the Murray Road site in Cincinnati. The Murray Road site had a preliminary 2008–2010 design value of 15.1 $\mu g/m^3$; however, the site was shut down in February of the first quarter of 2010 due to safety issues. The partial first quarter of 2010 data before the monitor shut down showed the only data above the NAAQS for the 2008–2010 period. Approval was granted for the site to be shut down because the Carthage Fire site registered a higher design value and is located approximately a mile from the Murray Road site. A comparison of the 2007–2009 data showed the sites were well correlated with each other. The comment period closed on July 5, 2011. No comments were received in response to the NPR.

II. What are the effects of these actions?

This final action, in accordance with 40 CFR 51.1004(c), suspends the requirements for this Area to submit attainment demonstrations, associated RACM, RFP plans, contingency measures, and other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS as long as this Area continues to meet the 1997 annual $PM_{2.5}$ NAAQS. Finalizing this action does not constitute a redesignation of the Cincinnati Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the Clean Air Act (CAA). Further, finalizing this action does not involve approving maintenance plans for the Area as required under section 175A of the CAA, nor does it involve a determination that the Area has met all requirements for a redesignation.

In addition, EPA is making a separate and independent determination that the Area has attained the 1997 annual $PM_{2.5}$ standard by its applicable attainment date (April 5, 2010), thereby satisfying EPA's requirement pursuant to section 179(c)(1) of the CAA to make such a determination based on the Area's air quality data as of the attainment date.

III. What are EPA's final actions?

EPA is determining that the Cincinnati Area has data indicating it has attained the 1997 annual $PM_{2.5}$ NAAQS, and additionally, that the Area has attained the standard by its applicable attainment date (April 5, 2010). These determinations are based upon quality-assured, quality-controlled, and certified ambient air monitoring data showing that this Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS during the period 2007–2009 and continues to monitor attainment during the 2008–2010 period. This final action, in accordance

with 40 CFR 51.1004(c), will suspend the requirements for this Area to submit attainment demonstrations, associated RACM, RFP plans, contingency measures, and other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS as long as the Area continues to meet the 1997 annual $PM_{2.5}$ NAAQS. These actions are being taken pursuant to section 179(c)(1) of the CAA and are consistent with the CAA and its implementing regulations.

IV. Statutory and Executive Order Reviews

These actions make a determination of attainment based on air quality, and will result in the suspension of certain federal requirements, and it will not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Are 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this 1997 $PM_{2.5}$ clean NAAQS data determination for the Cincinnati Area does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 28, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

For purposes of judicial review, the two determinations approved by today's action are severable from one another.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 18, 2011.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

Dated: September 12, 2011.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.774 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 52.774 Determination of attainment.

* * * * *

(b) Based upon EPA's review of the air quality data for the 3-year period 2007–2009, EPA determined that the Cincinnati-Hamilton, Ohio, Kentucky, and Indiana $PM_{2.5}$ nonattainment Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the Area's air quality as of the attainment date, whether the Area attained the standard. EPA also determined that the Cincinnati-Hamilton, Ohio, Kentucky, and Indiana $PM_{2.5}$ nonattainment Area is not subject to the consequences of failing to attain pursuant to section 179(d).

■ 3. Section 52.776 is amended by adding paragraph (x) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(x) *Determination of Attainment.* EPA has determined, as of September 29, 2011, that based upon 2007–2009 air quality data, the Cincinnati-Hamilton, Ohio, Kentucky, and Indiana, nonattainment Area has attained the 1997 annual $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this Area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this Area continues to meet the 1997 annual $PM_{2.5}$ NAAQS.

Subpart S—Kentucky

■ 4. Section 52.929 is amended by adding paragraph (c) to read as follows:

§ 52.929 Determination of attainment.

* * * * *

(c) Based upon EPA's review of the air quality data for the 3-year period 2007–2009, EPA determined that the Cincinnati-Hamilton, Ohio, Kentucky, and Indiana $PM_{2.5}$ nonattainment Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on

the Area's air quality as of the attainment date, whether the Area attained the standard. EPA also determined that the Cincinnati-Hamilton, Ohio, Kentucky, and Indiana $PM_{2.5}$ nonattainment Area is not subject to the consequences of failing to attain pursuant to section 179(d).

■ 5. Section 52.933 is amended by adding paragraph (e) to read as follows:

§ 52.933 Control Strategy: Sulfur oxides and particulate matter.

* * * * *

(e) *Determination of Attainment.* EPA has determined, as of September 29, 2011, that based upon 2007–2009 air quality data, the Cincinnati-Hamilton, Ohio-Kentucky-Indiana nonattainment Area has attained the 1997 annual $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this Area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this Area continues to meet the 1997 annual $PM_{2.5}$ NAAQS.

Subpart KK—Ohio

■ 6. Section 52.1880 is amended by adding paragraph (o) to read as follows:

§ 52.1880 Control strategy: Particulate matter.

* * * * *

(o) *Determination of Attainment.* EPA has determined, as of September 29, 2011, that based upon 2007–2009 air quality data, the Cincinnati-Hamilton, Ohio-Kentucky-Indiana nonattainment Area has attained the 1997 annual $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this Area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this Area continues to meet the 1997 annual $PM_{2.5}$ NAAQS.

■ 7. Section 52.1892 is amended by adding paragraph (c) to read as follows:

§ 52.1892 Determination of attainment.

* * * * *

(c) Based upon EPA's review of the air quality data for the 3-year period 2007–2009, EPA determined that the Cincinnati-Hamilton, Ohio-Kentucky-Indiana $PM_{2.5}$ nonattainment Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the Area's air quality as of the attainment date, whether the Area attained the standard. EPA also determined that the Cincinnati-Hamilton, Ohio, Kentucky, and Indiana $PM_{2.5}$ nonattainment Area is not subject to the consequences of failing to attain pursuant to section 179(d).

[FR Doc. 2011–24811 Filed 9–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0561; FRL–9469–1]

Revisions to the California State Implementation Plan, Santa Barbara Air Pollution Control District, Sacramento Municipal Air Quality Management District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Santa Barbara Air Pollution Control District (SBAPCD), Sacramento Municipal Air Quality Management District (SMAQMD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from solvent cleaning machines and solvent cleaning operations and oil and gas production wells. 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 November 28, 2011 without further notice, unless EPA receives adverse comments by October 31, 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–2011–0561, 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.

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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	Amended	Submitted
SBAPCD	321	Solvent Cleaning Machines and Solvent Cleaning	9/20/10	4/5/11
SMAQMD	466	Solvent Cleaning	10/28/10	4/5/11
SCAQMD	1171	Solvent Cleaning Operations	2/1/08	4/5/11
SCAQMD	1148.1	Oil and Gas Production Wells	Adopted 3/5/04	1/10/10

On February 4, 2010 (1148.1) and May 6, 2011 (321, 466 and 1171), EPA determined that the four 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?

We approved an earlier version of SBAPCD Rule 321 into the SIP on April 2, 1998 (64 FR 15922). We approved an earlier version of SMAQMD Rule 466 into the SIP on May 5, 2010 (75 FR 24406). We approved an earlier version of SCAQMD Rule 1171 into the SIP on July 1, 2005 (70 FR 38023). There are no previous versions of SCAMQD Rule 1148.1 in the SIP.

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. SBAPCD Rule 321, SMAQMD Rule 466, SCAQMD Rule 1171 and SCAQMD 1148.1 limit emissions of VOC from solvent cleaning machines, the application of solvents, and from oil and gas production wells. EPA's technical support documents (TSDs) 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). SBAPCD regulates an unclassifiable/attainable area for ozone, SMAQMD regulates an ozone nonattainment area and SCAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so SMAQMD Rule 466 and SCAQMD Rule 1171 and Rule 1148.1 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. CARB's Consumer Products Regulation, Title 17, California Code of Regulations (CCR), Division 3, Chapter 1, Subchapter 8.5, Article 2, Sections 94507–94517
4. EPA's model VOC rule guidance titled, ''Model Volatile Organic Compound Rules for Reasonably Available Control Technology'' (June 1992).

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 October 31, 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 November 28, 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: September 7, 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 (378)(i)(A)(*3*), and (c)(388)(i)(A)(*5*), (C), (D) and to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(378) * * *

(i) * * *

(A) * * *

(*3*) Rule 1148.1, ''Oil and Gas Production Wells,'' adopted on March 5, 2004.

* * * * *

(388) * * *

(i) * * *

(A) * * *

(*5*) Rule 1171, ''Solvent Cleaning Operations,'' amended February 1, 2008.

* * * * *

(C) Santa Barbara County Air Pollution Control District.

(*1*) Rule 321, ''Solvent Cleaning Machines and Solvent Cleaning,'' revised September 20, 2010.

(D) Sacramento Metropolitan Air Quality Management District.

(*1*) Rule 466, ''Solvent Cleaning,'' amended October 28, 2010.

* * * * *

[FR Doc. 2011–24688 Filed 9–28–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid

42 CFR Part 411

Exclusions From Medicare and Limitations on Medicare Payment

CFR Correction

In Title 42 of the Code of Federal Regulations, Parts 400 to 413, revised as of October 1, 2010, make the following corrections:

■ 1. On page 472, in § 411.353, in paragraph (g)(1)(i), remove the word ''complied'' and add ''complies'' in its place.

■ 2. On page 483, in § 411.357:

■ a. In paragraph (b)(4)(ii)(A), remove the word ''by'' and add ''through'' in its place, and

■ b. In paragraph (b)(4)(ii)(B), remove the phrase ''between the parties'' and add ''by the lessor to the lessee'' in its place.

■ 3. On page 488, in § 411.357, in paragraph (l)(3)(ii), remove the phrase ''between the parties'' and add ''by the lessor to the lessee'' in its place.

■ 4. On page 490, in § 411.357:

■ a. Remove paragraphs (p)(1)(ii) and (iii);

■ b. Designate the last sentence of (p)(1)(i) introductory text as paragraph (p)(1)(ii) introductory text;

■ c. In new paragraph (p)(1)(ii)(A), remove the phrase ''performed or'' and add ''performed on or'' in its place; and

■ d. In new paragaph (p)(1)(ii)(B), remove the phrase ''between the parties'' and add ''by the lessor to the lessee'' in its place.

[FR Doc. 2011–25286 Filed 9–28–11; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

Tariffs

CFR Correction

In Title 47 of the Code of Federal Regulations, Parts 40 to 69, revised as of October 1, 2010, on page 189, in § 61.3, redesignate paragraphs (aa) through (zz) as paragraphs (bb) through (aaa), and reinstate old paragraph (z) as paragraph (aa) to read as follows:

§ 61.3 Definitions.

* * * * *

(aa) *Other participating carrier.* A carrier subject to the Act that publishes

a tariff containing rates and regulations applicable to the portion or through service it furnishes in conjunction with another subject carrier.

* * * * *

[FR Doc. 2011–25201 Filed 9–28–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Hunting and Fishing

CFR Correction

In Title 50 of the Code of Federal Regulations, Parts 18 to 199, revised as of October 1, 2010, on page 448, in § 32.60, in the Ernest F. Hollings ACE Basin National Wildlife Refuge, reinstate paragraph D, to read as follows:

§ 32.60 South Carolina.

* * * * *

Ernest F. Hollings ACE Basin National Wildlife Refuge

* * * * *

■ *D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

■ 1. We allow fishing in impounded waters contained within dikes and levees in the Beaufort County portion of the refuge annually from April 1 through August 31 during daylight hours. We close fishing during all remaining times within all refuge-impounded waters.

■ 2. We prohibit boat use within refuge-impounded waters. We only allow bank fishing.

■ 3. We only allow hook and line sport fishing utilizing rod and reel or pole.

■ 4. We only open access into refuge areas to fishing by foot or bicycle.

* * * * *

[FR Doc. 2011–25199 Filed 9–28–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100903433–1531–02]

RIN 0648–BA22

Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab; Amendment 3

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

ACTION: Final rule.

SUMMARY: This final rule implements measures that were approved in Amendment 3 to the Atlantic Deep-Sea Red Crab Fishery Management Plan (FMP). The New England Fishery Management Council (Council) developed Amendment 3 to bring the FMP into compliance with the annual catch limit (ACL) and accountability measure (AM) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This rule establishes the mechanisms for specifying an ACL and AMs and sets the total allowable landings (TAL) for red crab for the 2011–2013 fishing years (FY). NMFS disapproved two proposed measures in Amendment 3. This final rule implements additional management measures to promote efficiency in the red crab fishery.

DATES: This rule is effective September 29, 2011.

ADDRESSES: An environmental assessment (EA) was prepared for Amendment 3 that describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 3, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281–9218; fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements approved measures in Amendment 3, which was partially approved by NMFS on behalf of the Secretary of Commerce (Secretary). A proposed rule to implement the measures in Amendment 3 published in the **Federal Register** on July 6, 2011 (76 FR 39369), with public comments accepted through August 5, 2011. Details concerning the development of Amendment 3 were contained in the preamble of the proposed rule and are not repeated here. A Notice of Availability (NOA) for Amendment 3 was published in the **Federal Register** on June 22, 2011 (76 FR 36511), with public comments accepted through August 22, 2011.

Amendment 3 was initiated to bring the Red Crab FMP into compliance with the Magnuson-Stevens Act and establish a framework for an ACL and AMs. Red crab is a data-poor stock and, in the absence of better scientific information, the SSC recommended setting the acceptable biological catch (ABC) equal to the long-term (1974–2008) average landings of the directed red crab fishery (3.91 million lb; 1,774 mt). The SSC determined that the results from the December 2008 Data Poor Stocks Working Group were an underestimate of the maximum sustainable yield (MSY) for red crab, but could not determine by how much, so the SSC did not recommend an estimate of MSY. As a result, the MSY estimate in the FMP was rejected, but a new estimate could not be determined. Because the SSC could not determine MSY, a new value for optimum yield (OY) could not be developed. The overfishing limit (OFL) is an estimate of the catch level above which overfishing is occurring, but based on the available information, the SSC determined that an OFL could not be estimated for the red crab fishery at this time. The SSC concluded that scientific uncertainty is accounted for by using the precautionary approach of the status quo, so setting ACL equal to ABC is appropriate. The SSC also concluded that the undeterminable level of discards associated with the long-term average landings is sustainable, and that setting the TAL equal to ACL is also appropriate.

Disapproved Measures

1. Modification to Trap Limit Restrictions

Changing the trap limit regulations to depth-based trap limits as proposed by the Council would be unenforceable and inconsistent with the policy of the Magnuson-Stevens Act that the management program be based on the Federal capabilities in carrying out enforcement (Magnuson-Stevens Act section 2(c)(3)). Depth-based provisions

are impractical for enforcement because the enforcement agent would have to witness the deployment of traps beyond the regulated depth range and/or witness the at-sea retrieval of the traps to determine compliance.

2. Prohibition on Landing Female Red Crab

Removing the prohibition on landing female red crabs, contingent upon a recommendation from the SSC, would be inconsistent with National Standard 2 of the Magnuson-Stevens Act and administratively confusing. The SSC determined that there were insufficient data to support removing the existing prohibition at this time and, because all of the catch recommendations were based on the long-term average landings of the male-only directed fishery, the SSC recommended the status quo as a sustainable approach. Amendment 3 proposed to remove the prohibition on landing female red crab only if the SSC approved a landing limit; however, the amendment did not specify how NMFS should implement and monitor a mixed-sex fishery. In addition, a framework adjustment would be necessary to implement management measures, including the ACL framework, for allowing the landing of female red crab regardless of the approval of this measure in Amendment 3.

Approved Measures

1. Biological and Management Reference Points

The biological and management reference points currently in the Red Crab FMP are used to determine if overfishing is occurring or if the stock is overfished. However, these reference points are not sufficient to comply with the Magnuson-Stevens Act and the National Standard 1 (NS1) guidelines. As a result, the Council intended to establish new estimates for MSY, OY, OFL, and ABC for red crab. However, MSY, OY, and OFL could not be estimated with the available information, and ABC is defined in terms of landings instead of total catch (i.e., the red crab ABC does not include dead discards).

The OFL is an estimate of the catch level above which overfishing is occurring, but based on the available information, the SSC determined that an OFL could not be estimated for the red crab fishery at this time.

ABC is defined under the Magnuson-Stevens Act as ''a level of stock or stock complex's annual catch that accounts for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty, and should be specified based on the ABC control rule.'' The NS1 guidelines further state that ''ABC may not exceed OFL,'' and that ''the determination of ABC should be based, when possible, on the probability that an actual catch equal to a stock's ABC would result in overfishing.'' These guidelines also require that the Council's ABC control rule be based on scientific advice provided by its SSC and that the SSC recommend the ABC to the Council.

The SSC, at its March 16, 2010, meeting, determined that the available information for red crab provided an insufficient basis on which to recommend an ABC control rule, and that ''an interim ABC based on long-term average landings is safely below an overfishing threshold and adequately accounts for scientific uncertainty.'' The SSC reviewed information on historical dead discards of red crab in the directed trap fishery and in bycatch fisheries at its June 22, 2010, meeting in an effort to recommend an ABC that includes both landings and dead discards. The SSC determined that there was insufficient information to specify dead discards, but that the long-term average landings, and the presumed discarding practices associated with those landings, were sustainable, and maintained its recommendation of specifying the interim red crab ABC in terms of landings only. Based on this approach, the long-term average landings for 1974–2008 result in an ABC of 3.91 million lb (1,775 mt), represented in terms of commercial landings.

2. ACL

The Magnuson-Stevens Act, under section 303(a)(15), requires that any FMP establish a mechanism for specifying ACLs at a level that prevents overfishing. The NS1 guidelines further state that the ACL for a given stock or stock complex cannot exceed the ABC, that it serves as the basis for invoking AMs, and that ACLs in coordination with AMs must prevent overfishing. Based on the requirements of the Magnuson-Stevens Act and the NS1 guidelines with respect to ACLs and AMs, Amendment 3 establishes an ACL for red crab that is equal to the ABC. Amendment 3 also sets the TAL equal to the ACL for FYs 2011–2013, because the management uncertainty in the red crab fishery is minimal and the SSC determined that there was insufficient information to specify dead discards.

3. Accountability Measures

The NS1 guidelines describe AMs as management controls aimed at preventing the ACL from being exceeded, and to correct or mitigate overages of the ACL. Amendment 3 implements both proactive and reactive AMs for the red crab fishery. The proactive AM grants the NMFS Regional Administrator the authority to close the red crab fishery when the TAL is projected to be harvested. The reactive AM is a pound-for-pound payback of any overage, should the TAL be exceeded. In any year in which the ACL and TAL are not equal, if the ACL is exceeded, the amount of that overage not already deducted from the TAL (e.g., higher than expected discards, or an unexpected increase in incidental landings by vessels with open access red crab permits) will be deducted from the subsequent single fishing year's ACL.

4. FYs 2011–2013 Specifications

The following specifications will be in effect for FYs 2011–2013:

	mt	Million lb
MSY	undetermined ..	undetermined.
OFL	undetermined ..	undetermined.
OY	undetermined ..	undetermined.
ABC	1,775	3.91.
ACL	1,775	3.91.
TAL	1,775	3.91.

5. TAL; Eliminate DAS

This measure replaces the DAS and target TAC management program with a TAL. This simplifies the management measures for red crab, provides increased flexibility to the red crab fleet, and ensures more accurate accounting of the catch limits and monitoring of the catch.

6. Eliminate Trip Limits

Red crab vessels qualified for a trip limit during the initial limited access qualification process. The FMP specified a trip limit of 75,000 lb (34,019 kg), unless a vessel owner could demonstrate he or she landed more than 75,000 lb (34,019 kg) on a trip during the qualification period and was granted a trip limit equal to that higher level, rounded to the nearest 5,000 lb (2,268 kg). One vessel qualified under that provision, and has operated with a trip limit of 125,000 lb (56,699 kg) since 2002. Amendment 3 eliminates these trip limits to simplify the management measures for red crab and to provide increased flexibility to the red crab fleet.

Comments and Responses

Two comments were received on the proposed rule and the amendment. One comment was received on the NOA, from the National Park Service, stating no objection to Amendment 3. One comment was received on the proposed

rule from an individual recommending that NMFS cut all quotas, including the red crab quota, by 50 percent. Amendment 3 proposed, and this final rule implements, a catch level consistent with the best available scientific information, as recommended by the SSC.

Classification

The Administrator, Northeast Region, NMFS, determined that Amendment 3 is necessary for the conservation and management of the red crab fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 553(d)(1), NMFS finds good cause to waive the 30-day delayed effectiveness provision of the APA because any delay in effectiveness is unnecessary. This action implements a TAL that is equal to the target TAC that the fishery is currently operating under for FY 2011, establishes AMs that would not be implemented unless the TAL is exceeded, and removes the DAS program and trip limits for the limited access red crab fleet. The purpose of the delay in effectiveness is to allow affected parties time to modify their behaviors, businesses, or practices to come into compliance with new regulations. This rule imposes no additional requirements on the affected entities. It retains the current TAL for the red crab fishery, and removes the DAS and trip limit restrictions; thus, implementing this rule will not affect the day-to-day operations of the fleet In fact, removing the DAS and trip limit restrictions will allow the red crab fleet to fish more efficiently and provides flexibility to vessel owners. The AM to close the directed fishery will not necessarily impact the fishery, because the AM will only be implemented if TAL is exceeded prior to the end of the FY, which may not occur. Because implementing the rule upon publication will not require any change in fishery practices, nor will it cause a fishery participant to be in violation of a new regulation, delaying the rule's effectiveness for thirty days is unnecessary.

Moreover, waiving the delayed effectiveness of this rule is in the public interest. Currently, five vessels divide equally the total number of DAS, even though only four vessels are fishing. The fleet had anticipated that Amendment 3 would be effective at an earlier date, and did not exercise its ability to ''opt out'' the one permit that does not fish last fall, which would have reallocated the fleet DAS between four vessels instead of five. Thus, each vessel has a lower allocation of red crab DAS than they would have had they opted out one permit. In addition, one of the vessels is nearing the end of its DAS allocation and would have to stop fishing until this rule is implemented. Finally, this rule will increase the fleet's flexibility and ability to take the entire fishing quota, which is the purpose of the rule. Currently, the fleet is half-way through the fishing year, but only 40% through the quota. If this rule is not implemented upon publication, the purpose of the rule may be undermined.

Accordingly, the delay in effectiveness is unnecessary and contrary to the public's interest, and is hereby waived.

The Council prepared an EA for Amendment 3. Based on the analysis in the EA, the AA concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the EA is available from the Council (see **ADDRESSES**).

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared a FRFA in support of Amendment 3. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, relevant analyses in the Amendment and its EA, and a summary of the analyses completed to support the action implemented through this rule. A copy of the analyses done in the Amendment and EA is available from the Council (see **ADDRESSES**). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Two comments were received on the proposed rule and the amendment. However, neither of these comments were specific to the IRFA or economic analysis contained in Amendment 3.

Description and Estimate of Number of Small Entities to Which the Final Rule Will Apply

The Small Business Administration (SBA) considers commercial fishing entities (NAICS code 114111) to be small entities if they have no more than $4 million in annual sales, while the size standard for charter/party operators (part of NAICS cod 487210) is $7 million in sales. The participants in the commercial red crab fishery are those vessels issued limited access red crab permits. Although some firms own more than one vessel, available data make it difficult to reliably identify ownership control over more than one vessel. For this analysis, the number of permitted vessels is considered to be a maximum estimate of the number of small business entities. However, the total value of landings in the red crab fishery averaged $3.44 million, so all business entities in the harvesting sector can be categorized as small businesses for purpose of the RFA, even if the assumption overstates the number of business entities. For the reasons above, all vessels with limited access permits would be considered small business entities that would be affected by the proposed action. As of September 2011, there were four vessels with limited access red crab permits actively operating in the red crab fishery.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no compliance requirements associated with this final rule implementing Amendment 3.

This final rule does not duplicate, overlap, or conflict with other Federal rules.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

All of the management measures in Amendment 3 that were approved by NMFS provide for increased flexibility and promote efficiency within the fishery. This action implements a measure that eliminates the DAS requirements, which provides for increased flexibility for vessel owners to fish without concern for their DAS clock. Amendment 3 also removes the commercial trip limit, which eliminates regulatory discards and promotes efficiency. Therefore, by implementing management measures that increase flexibility and efficiency and reduce waste, NMFS has taken the steps necessary to minimize the impacts of this action on small entities consistent with the stated objectives of applicable statutes.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group

of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the red crab fishery. The guide and this final rule will be available upon request, and posted on the Northeast Regional Office's Web site at *http://www.nero.noaa.gov.*

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: September 23, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.2, the definition for ''Day(s)-at-Sea'' is revised, and the definition for ''Red crab trip'' is added, in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Day(s)-at-Sea (DAS), with respect to the NE multispecies and monkfish fisheries (except as described in § 648.82(k)(1)(iv)), and the Atlantic sea scallop fishery, means the 24-hr period of time or any part thereof during which a fishing vessel is absent from port to fish for, possess, or land, or fishes for, possesses or lands, regulated species, monkfish, or scallops.

* * * * *

Red crab trip, with respect to the Atlantic deep-sea red crab fishery, means a trip on which a vessel fishes for, possesses, or lands, or intends to fish for, possess, or land red crab in excess of the incidental limit, as specified at § 648.263(b)(1).

* * * * *

■ 3. In § 648.4, paragraphs (a)(13)(i)(E)(*3*), (a)(13)(i)(M), and (a)(13)(i) (N) are removed; and paragraphs (a)(13)(i)(A) and (B) are revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(13) * * *

(i) *Limited access red crab permit*—(A) *Eligibility.* Any vessel of the United States that possesses or lands more than the incidental amount of red crab, as specified in § 648.263(b), per red crab trip must have been issued and carry on board a valid limited access red crab permit.

(B) *Application/renewal restrictions.* The provisions of paragraph (a)(1)(i)(B) of this section apply.

* * * * *

§ 648.7 [Amended]

■ 4. In § 648.7, paragraph (b)(2)(iii) is removed.

■ 5. In § 648.10, paragraphs (h) introductory text, (h)(4), and (h)(8) are revised to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(h) *Call-in notification.* The owner of a vessel issued a limited access monkfish permit who is participating in a DAS program and who is not required to provide notification using a VMS, and a scallop vessel qualifying for a DAS allocation under the occasional category that has not elected to fish under the VMS notification requirements of paragraph (e) of this section and is not participating in the Sea Scallop Area Access program as specified in § 648.60, and any vessel that may be required by the Regional Administrator to use the call-in program under paragraph (i) of this section, are subject to the following requirements:

* * * * *

(4) The vessel's confirmation numbers for the current and immediately prior NE multispecies or monkfish fishing trip must be maintained on board the vessel and provided to an authorized officer immediately upon request.

* * * * *

(8) Any vessel issued a limited access scallop permit and not issued an LAGC scallop permit that possesses or lands scallops; any vessel issued a limited access scallop and LAGC IFQ scallop permit that possesses or lands more than 600 lb (272.2 kg) of scallops; any vessel issued a limited access scallop and LAGC NGOM scallop permit that possesses or lands more than 200 lb (90.7 kg) of scallops; any vessel issued a limited access scallop and LAGC IC scallop permit that possesses or lands more than 40 lb (18.1 kg) of scallops; any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§ 648.10(h)(9)(ii), 648.17, and 648.89; and any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possess or lands monkfish above the incidental catch trip limits specified in § 648.94(c) shall be deemed to be in its respective DAS program for purposes of counting DAS and will be charged DAS from its time of sailing to landing, regardless of whether the vessel's owner or authorized representative provides adequate notification as required by paragraphs (e) through (h) of this section.

* * * * *

■ 6. In § 648.14, paragraphs (t)(2)(iii) and (t)(3)(iv) are added; paragraphs (t)(4) through (6) are revised; and paragraph (t)(7) is removed to read as follows:

§ 648.14 Prohibitions.

* * * * *

(t) * * *

(2) * * *

(iii) Fish for, possess, or land red crab, in excess of the incidental limit specified at § 648.263(b)(1), after determination that the TAL has been reached and notice of the closure date has been made.

* * * * *

(3) * * *

(iv) Purchase or otherwise receive for a commercial purpose in excess of the incidental limit specified at § 648.263(b)(1), after determination that the TAL has been reached and notice of the closure date has been made.

(4) *Prohibitions on processing and mutilation.* (i) Retain, possess, or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish tote, if fishing on a red crab trip with a valid Federal limited access red crab permit.

(ii) Retain, possess, or land any red crab claws and legs separate from crab bodies if the vessel has not been issued a valid Federal limited access red crab permit or has been issued a valid Federal limited access red crab permit, but is not fishing on a dedicated red crab trip.

(iii) Retain, possess, or land more than two claws and eight legs per crab if the vessel has been issued a valid Federal red crab incidental catch permit, or has been issued a valid Federal limited access red crab permit and is not fishing on a dedicated red crab trip.

(iv) Possess or land red crabs that have been fully processed at sea, i.e., engage in any activity that removes meat from any part of a red crab, unless a preponderance of available evidence shows that the vessel fished exclusively in state waters and was not issued a valid Federal permit.

(5) *Gear requirements.* Fail to comply with any gear requirements or restrictions specified at § 648.264.

(6) *Presumption.* For purposes of this part, the following presumption applies: All red crab retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested in or from the Red Crab Management Unit, unless the preponderance of all submitted evidence demonstrates that such red crab were harvested by a vessel fishing exclusively outside of the Red Crab Management Unit or in state waters.

* * * * *

■ 7. Section 648.260 is revised to read as follows:

§ 648.260 Specifications.

(a) *Annual review and specifications process.* The Council, the Red Crab Plan Development Team (PDT), and the Red Crab Advisory Panel shall monitor the status of the red crab fishery and resource.

(1) The Red Crab PDT shall meet at least once annually during the intervening years between Stock Assessment and Fishery Evaluation (SAFE) Reports, described in paragraph (b) of this section, to review the status of the stock and the fishery. Based on such review, the PDT shall provide a report to the Council on any changes or new information about the red crab stock and/or fishery, and it shall recommend whether the specifications for the upcoming year(s) need to be modified. At a minimum, this review shall include a review of at least the following data, if available: commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of red crabs; and any other relevant information.

(2) If new and/or additional information becomes available, the Red Crab PDT shall consider it during this annual review. Based on this review, the Red Crab PDT shall provide guidance to the Red Crab Committee and the Council regarding the need to adjust measures in the Red Crab FMP to better achieve the FMP's objectives. After considering guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the specifications process described in this section, the framework process specified in § 648.261, or through an amendment to the FMP.

(3) Based on the annual review, described above, and/or the SAFE Report described in paragraph (b) of this section, recommendations for acceptable biological catch (ABC) from the Scientific and Statistical Committee (SSC), and any other relevant information, the Red Crab PDT shall recommend to the Red Crab Committee and Council the following specifications for harvest of red crab: an annual catch limit (ACL) set less than or equal to ABC; and total allowable landings (TAL) necessary to meet the objectives of the FMP in each red crab fishing year, specified for a period of up to 3 fishing years.

(4) The PDT, after its review of the available information on the status of the stock and the fishery, may recommend to the Council any measures necessary to assure that the specifications will not be exceeded, as well as changes to the appropriate specifications.

(5) Taking into account the annual review and/or SAFE Report described in paragraph (b) of this section, the advice of the SSC, and any other relevant information, the Red Crab PDT may also recommend to the Red Crab Committee and Council changes to stock status determination criteria and associated thresholds based on the best scientific information available, including information from peer-reviewed stock assessments of red crab. These adjustments may be included in the Council's specifications for the red crab fishery.

(6) *Council recommendation*—(i) The Council shall review the recommendations of the Red Crab PDT, Red Crab Committee, and SSC, any public comment received thereon, and any other relevant information, and make a recommendation to the Regional Administrator on appropriate specifications and any measures necessary to assure that the specifications will not be exceeded.

(ii) The Council's recommendation must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall consider the recommendations and publish a rule in the **Federal Register** proposing specifications and associated measures, consistent with the Administrative Procedure Act.

(iii) The Regional Administrator may propose specifications different than those recommended by the Council. If the specifications published in the **Federal Register** differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section, the FMP, and other applicable laws.

(iv) If the final specifications are not published in the **Federal Register** for the start of the fishing year, the previous year's specifications shall remain in effect until superseded by the final rule implementing the current year's specifications, to ensure that there is no lapse in regulations while new specifications are completed.

(b) *SAFE Report.* (1) The Red Crab PDT shall prepare a SAFE Report at least every 3 yr. Based on the SAFE Report, the Red Crab PDT shall develop and present to the Council recommended specifications as defined in paragraph (a) of this section for up to 3 fishing years. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the red crab fishery. The SAFE Report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(2) In any year in which a SAFE Report is not completed by the Red Crab PDT, the annual review process described in paragraph (a) of this section shall be used to recommend any necessary adjustments to specifications and/or management measures in the FMP.

■ 8. Section 648.262 is revised to read as follows:

§ 648.262 Accountability measures for red crab limited access vessels.

(a) *Closure authority.* NMFS shall close the EEZ to fishing for red crab in excess of the incidental limit by commercial vessels for the remainder of the fishing year if the Regional Administrator determines that the TAL has been harvested. Upon notification of the closure, a vessel issued a limited access red crab permit may not fish for, catch, possess, transport, land, sell, trade, or barter, in excess of 500 lb (226.8 kg) of red crab, or its equivalent

in weight as specified at § 648.263(a)(2)(i) and (ii), per fishing trip in or from the Red Crab Management Unit.

(b) *Adjustment for an overage.* (1) If NMFS determines that the TAL was exceeded in a given fishing year, the exact amount of the landings overage will be deducted, as soon as is practicable, from a subsequent single fishing year's TAL, through notification consistent with the Administrative Procedure Act.

(2) If NMFS determines that the ACL was exceeded in a given fishing year, the exact amount of an overage that was not already deducted from the TAL under paragraph (b)(i) of this section will be deducted, as soon as is practicable, from a subsequent single fishing year's TAL, through notification consistent with the Administrative Procedure Act.

■ 9. In § 648.263, paragraph (a)(1) is removed and reserved, and paragraphs (a)(5) and (b)(1) are revised to read as follows:

§ 648.263 Red crab possession and landing restrictions.

(a) * * *

(5) *Mutilation restriction.* A vessel may not retain, possess, or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish tote per trip when fishing on a dedicated red crab trip.

(b) * * *

(1) *Possession and landing restrictions.* A vessel or operator of a vessel that has been issued a red crab incidental catch permit, or a vessel issued a limited access red crab permit not on a dedicated red crab trip, as defined in § 648.2, may catch, possess, transport, land, sell, trade, or barter, up to 500 lb (226.8 kg) of red crab, or its equivalent in weight as specified at paragraphs (a)(1)(i) and (ii) of this section, per fishing trip in or from the Red Crab Management Unit.

* * * * *

■ 10. In § 648.264, paragraph (a)(1) is revised to read as follows:

§ 648.264 Gear requirements/restrictions.

(a) * * *

(1) Limited access red crab vessel may not harvest red crab from any fishing gear other than red crab traps/pots, marked as specified by paragraph (a)(5) of this section.

* * * * *

[FR Doc. 2011–25158 Filed 9–28–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 189
Thursday, September 29, 2011

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

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2011–0088]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Citizenship and Immigration Services–016 Electronic Immigration System-3 Automated Background Functions System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the ''Department of Homeland Security U.S. Citizenship and Immigration Services–016 Electronic Immigration System-3 Automated Background Functions System of Records'' and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before October 31, 2011.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0088, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Donald K. Hawkins (202–272–8000), Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue, NW., Washington, DC 20529. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS) proposes to establish a new DHS system of records titled, ''DHS/USCIS–016 Electronic Immigration System-3 Automated Background Functions System of Records.'' DHS/USCIS is creating a new electronic environment known as the Electronic Immigration System (USCIS ELIS). USCIS ELIS allows individuals requesting a USCIS benefit to register online and submit certain benefit requests through the online system. This system will improve customer service; increase efficiency for processing benefits; better identify potential national security concerns, criminality, and fraud; and create improved access controls and better auditing capabilities.

DHS and USCIS are promulgating the regulation ''Immigration Benefits Business Transformation, Increment I'' (August 29, 2011, 76 FR 53764) to make it possible for USCIS to transition to an electronic environment. This regulation will assist USCIS in the transformation of its operations by removing references and processes that inhibit the use of electronic systems or constrain USCIS's ability to respond to changing workloads, priorities, or statutory requirements.

Applicants and petitioners (Applicants); co-applicants, beneficiaries, derivatives, dependents, or other persons on whose behalf a benefit request is made or whose immigration status may be derived because of a relationship to the Applicant (Co-Applicants); and their attorneys and representatives accredited by the Board of Immigration Appeals (Representatives) may create individualized online accounts. These online accounts help Applicants and their Representatives file for benefits, track the status of open benefit requests, schedule appointments, change their addresses and contact information, and receive notices and notifications regarding their cases. Through USCIS ELIS, individuals may submit additional information and/or evidence electronically. Once an individual provides biographic information in one benefit request, USCIS ELIS uses that information to pre-populate any future benefit requests filed by the same individual. This eases the burden on an individual so he or she does not have to repeatedly type in the same information and decreases the opportunity for error.

USCIS collects this information primarily for the benefit decision-making process, to detect duplicate and related accounts, identify potential national security concerns, criminality, and fraud. In essence, Electronic Immigration System-3 Automated Background Functions (USCIS ELIS Automated Background Functions) is used to assist USCIS personnel in verifying the data submitted by the Applicant or Representative, to ensure that any duplicate accounts will be merged, and that background check results, indicating threats to the national security, public safety criminality, or fraud will be appropriately considered in adjudicating the benefit request.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/USCIS–016 Electronic Immigration System-3 Automated Background Functions System of Records. Some information in Electronic Immigration System-3 Automated Background Functions (USCIS ELIS Automated Background Functions)

relates to official DHS national security, law enforcement, and immigration activities. The exemptions are required to preclude subjects from compromising an ongoing law enforcement, national security or fraud investigation; to avoid disclosure of investigative techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; and to ensure DHS's ability to obtain information from third parties and other sources.

This system is exempted from the following provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Additionally, many of the functions in this system require retrieving records from law enforcement systems. Where a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions in accordance with this rule.

The exemptions proposed here are standard for agencies where the information may contain investigatory materials compiled for law enforcement purposes. These exemptions are exercised by executive federal agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the overall law enforcement process, the applicable exemptions may be waived on a case-by-case basis.

A notice of system of records for DHS/USCIS–016 Electronic Immigration System-3 Automated Background Functions System of Records is also published in this issue of the **Federal Register**.

II. Privacy Act

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

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

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

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

2. Add at the end of Appendix C to Part 5, the following new paragraph ''62'':

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

* * * * *

62. The DHS/USCIS–016 Electronic Immigration System-3 Automated Background Functions System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/USCIS–016 Electronic Immigration System-3 Automated Background Functions System of Records is a repository of information held by USCIS to serve its mission of processing immigration benefits. This system also supports certain other DHS programs whose functions include, but are not limited to, the enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. The DHS/USCIS–016 Electronic Immigration System-3 Automated Background Functions System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. This system is exempted from the following provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Additionally, many of the functions in this system require retrieving records from law enforcement systems. Where a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions in accordance with this rule. Exemptions from these particular subsections are justified, on a case-by-case basis determined at the time a request is made, for the following reasons:

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

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

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

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

Dated: September 15, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–24931 Filed 9–28–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2011–0091]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security Federal Emergency Management Agency–012 Suspicious Activity Reporting System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the ''Department of Homeland Security/Federal Emergency Management Agency–012 Suspicious Activity Reporting System of Records'' and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before October 31, 2011.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0091, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Dr. Lesia Banks, (202–646–3323), Acting Privacy Officer, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC 20478. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA) proposes to establish a new DHS/FEMA system of records titled, ''DHS/FEMA–012 Suspicious Activity Reporting System of Records.''

FEMA's mission is to ''support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards.'' FEMA will collect, maintain, and retrieve records on individuals who report suspicious activities, individuals reported as being involved in suspicious activities, and individuals charged with the analysis and appropriate handling of suspicious activity reports. FEMA's Office of the Chief Security Officer (OCSO), Fraud and Investigations Unit, manages this process. To reduce any risk of unauthorized access, FEMA SARs are secured in a room monitored by FEMA OCSO special agents and analysts.

FEMA SARs may shared with federal, state, local, and tribal jurisdictions that hold the responsibility of investigating suspicious activities within their jurisdictions. FEMA SARs that do not have a nexus to terrorism or hazards to homeland security, as determined by FEMA OCSO special agents or analysts, are forwarded to the appropriate jurisdiction, such as sheriff offices, county/city police, and state police. FEMA SARs that have a nexus to terrorism or hazards to homeland security, as determined by FEMA OCSO special agents or analysts, are shared with the Federal Bureau of Investigations (FBI) Joint Terrorism Task Force (JTTF), Federal Protective Service, and/or other federal agencies required to investigate and respond to terrorist threats or hazards to homeland security.

FEMA's SAR process is authorized and governed by 44 CFR Chapter 2 ''Delegation of Authority;'' 42 U.S.C. 5196(d); Executive Orders 12333 and 13388; 40 U.S.C. 1315(b)(2)(F); 6 U.S.C. 314; The Homeland Security Act of 2002, as amended; the Intelligence Reform and Terrorism Prevention Act of 2004, as amended; the National Security Act of 1947, as amended; and FEMA Manual 1010–1 ''Federal Emergency Management Agency Missions and Functions.''

Consistent with DHS's information sharing mission, information stored in the DHS/FEMA–012 Suspicious Activity Reporting System of Records may be shared with other DHS components, as well as appropriate federal, state, local, tribal, territorial, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for the DHS/FEMA–012 Suspicious Activity Reporting System of Records. Some information in the DHS/FEMA–012 Suspicious Activity Reporting System of Records relates to official DHS national security, law enforcement, and intelligence activities. These exemptions are needed to protect information relating to DHS activities

from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS' ability to obtain information from third parties and other sources; to protect the privacy of third parties; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records for DHS/FEMA–012 Suspicious Activity Reporting System of Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

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

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

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

2. Add at the end of Appendix C to Part 5, the following new paragraph ''60'':

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

* * * * *

60. The DHS/FEMA–012 Suspicious Activity Reporting System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/FEMA–012 Suspicious Activity Reporting System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. The DHS/FEMA–012 Suspicious Activity Reporting System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. 552a (k)(2). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

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

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

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

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

Dated: September 9, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–24935 Filed 9–28–11; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 27

[Doc. #AMS–CN–10–0073; CN–10–005]

RIN 0581–AD16

Revision of Cotton Futures Classification Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to update the procedures for cotton futures quality classification services by using Smith-Doxey classification data in the cotton futures classification process. In addition, references to a separate and optional review of cotton futures certification would be eliminated to reflect current industry practices. These proposed changes in procedures for cotton futures quality classification services, as well as proposed conforming changes, reflect advances in cotton fiber quality measurement and data processing made since the regulations were last updated in 1992.

DATES: Comments must be received on or before October 31, 2011.

ADDRESSES: Interested persons may comment on the proposed rule using the following procedures:

- *Internet: http://www.regulations.gov.*
- *Mail:* Darryl Earnest, Deputy Administrator, Cotton & Tobacco Programs, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Comments should be submitted in triplicate. All comments should reference the docket number, date, and page number of this issue of the **Federal Register.**

All comments will be available for public inspection at Cotton & Tobacco

Program, AMS, USDA, Room 2637–S, 1400 Independence Avenue, SW., Washington, DC 20250 during regular business. Comments, including the identity of the commenter can also be reviewed on: *http://www.regulations.gov.* A copy of this notice may be found at: *http://www.ams.usda.gov/cotton/rulemaking.htm.*

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton & Tobacco Programs, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail *darryl.earnest@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities. Fees paid by users of the service are not changed by this action; implementation of the new procedures indicates the existing fees remain sufficient to fully reimburse AMS for provision of the services.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are approximately sixty cotton merchant organizations of various sizes active in trading U.S. cotton. Cotton merchants voluntarily use the AMS cotton futures classification services annually under the Cotton Futures Act (Act) (7 U.S.C. 15b). Many of these cotton merchants are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201).

Revisions being proposed reflect the progress made in quality determination and data dissemination. The proposed process changes in the classification of cotton futures will yield increases of efficiency to the benefit of the cotton marketing industry.

Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0029.

Background

AMS Cotton and Tobacco Programs is proposing to revise procedures for providing services related to the classification of cotton futures as authorized by Act by using Smith-Doxey classification data in the cotton futures classification process. The Act requires USDA-certified quality measurements for each bale included in futures contracts for the purpose of verifying that each bale meets the minimum quality requirements for cotton futures trading.

USDA was first directed to provide cotton classification services to producers of cotton under the Smith-Doxey Act of April 13, 1937 (Pub. L. 75–28). Therefore, the original classification of a cotton bale's sample and quality data which results from this classification is commonly referred to as the Smith-Doxey classification or Smith-Doxey data. While cotton classification is not mandatory, practically every cotton bale grown in the United States today is classed by USDA under the authority of the Cotton Statistics and Estimates Act (7 U.S.C. 471–476) and the U.S. Cotton Standards Act (7 U.S.C. 51–65) and under regulations found in 7 CFR part 28—Cotton Classing, Testing, and Standards. The U.S. cotton industry uses Smith-Doxey classification data to assign quality-adjusted market values to U.S. cotton and market U.S. cotton both domestically and internationally. Although the Smith-Doxey classification and the futures classification are independent measures of cotton quality that serve different purposes, the Smith-Doxey data is used by the cotton merchant community to indicate which bales may be tenderable against a cotton futures contract.

USDA's cotton classification capabilities have dramatically improved as a result of the extensive technological progress, increasing data accuracy and operational efficiency. In addition to the increased accuracy and reliability of Smith-Doxey data, improvements in data management and the desire to increase operational efficiencies have prompted the Cotton and Tobacco Programs to propose the use of Smith-Doxey classification data in the cotton futures classification process.

Currently, the futures classification process is a two-step process that occurs after the Smith-Doxey classification in which an initial futures classification is immediately verified by a review—commonly referred to as a final futures classification. When verified by a futures classification, Smith-Doxey classification data will serve as the initial futures classification with the verifying futures classification serving as the final futures classification, reducing the number of futures classifications required in many instances. Verification of Smith-Doxey classing data is necessary because certain quality characteristics—especially color—are known to change over time and when cotton is subjected to certain environmental conditions.

In cases where the comparison of Smith-Doxey data and futures classification data fail to pass pre-established tolerances, the first futures classification becomes the initial futures classification and a second futures classification (final futures classification) will be required. The use of Smith-Doxey classification data will significantly reduce the need for yet another cotton futures classification. The proposed changes would improve operational efficiency while potentially improving the integrity and accuracy of classification data provided to the cotton industry.

For the reasons set forth above, this proposal would amend 7 CFR part 27—Cotton Classification Under Cotton Futures Legislation, which establishes the procedures for determining cotton classification for cotton submitted for futures certification. Specific changes required to implement the proposed futures classification procedure include the elimination of outdated procedures in sections 27.61–27.67, 27.69 and 27.72 used to guide optional reviews of futures classifications and the elimination of references to fees charged for ''initial classification and certification'', ''review classification and certification'' and ''combination services'' in section 27.80. Conforming changes would also remove references to eliminated sections 27.9, 27.14, 27.21., 27.36 and 27.47 and apply current organizational terminology in paragraph (h) of section 27.2 and section 27.39.

As stated above, the cotton futures classification includes a process by which an initial futures classification is followed up by a futures final

classification. While not mandatory, this two-stage process has been deemed appropriate by the industry. Therefore, sections 27.61–27.67, 27.69 and 27.72, which address optional reviews of futures classifications, are irrelevant. Furthermore, reference to ''initial classification and certification'' fees in paragraph (a) of section 27.80 are removed to avoid confusion with Smith-Doxey classifications and to reflect that initial classification fees are already specified in paragraph (b) of 7 CFR 28.909. Likewise, reference to ''review classification and certification'' fees in paragraph (b) of section 27.80 are removed since fees for review classifications are already specified in 7 CFR 28.911.

The term ''combination services'' in paragraph (d) of section 27.80 reflects the current practice of performing an ''initial'' futures classification and an immediate ''review'' futures classification. Since Smith-Doxey classification data will serve as the initial futures classification when verified by a ''review'' futures classification, these services will be simply defined as ''futures classification services.''

List of Subjects in 7 CFR Part 27

Commodity futures, Cotton.

For the reasons set forth in the preamble it is proposed that 7 CFR part 27 be amended as follows:

PART 27—[AMENDED]

1. The authority citation for 7 CFR part 27 continues to read as follows:

Authority: 7 U.S.C. 15b, 7 U.S.C. 4736, 7 U.S.C. 1622(g).

2. In § 27.2, paragraph (h) is revised to read as follows:

§ 27.2 Terms defined.

* * * * *

(h) *Cotton Quality Assurance Division.* The Cotton Quality Assurance Division at Memphis, Tennessee, shall provide supervision of futures cotton classification.

* * * * *

3. Section 27.9 is revised to read as follows:

§ 27.9 Classing Offices; Cotton Quality Assurance Division.

Classing Offices shall be maintained at points designated for the purpose by the Administrator. The Cotton Quality Assurance Division shall provide supervision of futures cotton classification and perform other duties as assigned by the Deputy Administrator.

4. Section 27.14 is revised to read as follows:

§ 27.14 Filing of classification requests.

Requests for futures classification shall be filed with the Cotton Quality Assurance Division within 10 days after sampling and before classification of the samples.

§ 27.21 [Removed and Reserved]

5. Section 27.21 is removed and reserved.

6. Section 27.36 is revised to read as follows:

§ 27.36 Classification determinations based on official standards.

All cotton shall be classified on the basis of the official cotton standards of the United States in effect at the time of such classification.

7. Section 27.39 is revised to read as follows:

§ 27.39 Issuance of classification records.

Except as otherwise provided in this section, as soon as practicable after the classification of cotton has been completed by the Cotton and Tobacco Programs, the Cotton Quality Assurance Division shall issue an electronic cotton classification record showing the results of such classification. Each electronic record shall bear the date of its issuance. The electronic record shall show the identification of the cotton according to the information in the possession of the Cotton and Tobacco Programs, the classification of the cotton and such other facts as the Deputy Administrator may require.

8. Section 27.47 is revised to read as follows:

§ 27.47 Tender or delivery of cotton; conditions.

Subject to the provisions of §§ 27.52 through 27.55, no cotton shall be tendered or delivered on a basis grade contract unless on or prior to the date fixed for delivery under such contract, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a valid outstanding cotton classification record complying with the regulations in this subpart, showing such cotton to be tenderable on a basis grade contract.

§ 27.61 [Removed and Reserved]

9. The undesignated center heading preceding § 27.61 is removed and § 27.61 is removed and reserved.—27.67, 27.69 and 27.72 are removed and reserved.

§§ 27.62–27.67 [Removed and Reserved]

10. Sections 27.62 through 27.67 are removed and reserved.

§ 27.69 [Removed and Reserved]

11. Section 27.69 is removed and reserved.

§ 27.72 [Removed and Reserved]

12. Section 27.72 is removed and reserved.

13. Section 27.80 is revised to read as follows:

§ 27.80 Fees; review classification, futures classification and supervision.

For services rendered by the Cotton Division pursuant to this subpart, whether the cotton involved is tenderable or not, the person requesting the services shall pay fees as follows:

(a) [Reserved]

(b) [Reserved]

(c) [Reserved]

(d) Futures classification—$3.50 per bale.

Dated: September 23, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–25078 Filed 9–28–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. APHIS–2009–0100]

RIN 0579–AD35

Irradiation Treatment; Location of Facilities in the Southern United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the phytosanitary treatment regulations to provide generic criteria for new irradiation treatment facilities in the Southern States of the United States. This action would allow irradiation facilities to be located anywhere in these States, subject to approval, rather than only in the currently approved locations. We are also proposing to allow for the irradiation treatment of certain imported fruit from India and Thailand upon arrival in the United States. This action would facilitate the importation of fruit requiring irradiation treatment while continuing to provide protection against the introduction of pests of concern into the United States.

DATES: We will consider all comments that we receive on or before November 28, 2011.

ADDRESSES: You may submit comments by either of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2009-0100–0001.*

• *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2009–0100, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0100* 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.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. S. Gadh, Senior Risk Manager–Treatments, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

The phytosanitary treatment regulations contained in 7 CFR part 305 (referred to below as the regulations) set out the general requirements for performing treatments and certifying or approving treatment facilities for fruits, vegetables, and other articles to prevent the introduction or dissemination of plant pests or noxious weeds into or through the United States. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture administers these regulations.

Irradiation Treatment in Southern States

The regulations in § 305.9 set out irradiation treatment requirements for imported regulated articles; regulated articles moved interstate from Hawaii, Puerto Rico, and the U.S. Virgin Islands; and regulated articles moved interstate from areas quarantined for certain pests of concern. Under § 305.9, all facilities used to provide irradiation treatment for these articles must operate under a compliance agreement with APHIS and be certified as capable of delivering required irradiation treatment dosages and handling articles to prevent reinfestation of treated articles. An inspector [1] monitors all treatments. The regulations require regulated articles to be transported to the facility and handled prior to treatment without significant risk that pests will escape. Safeguards to prevent the escape of pests during transportation to and while at the facility include inspections, physical separation of untreated and treated articles, packaging of regulated articles in sealed, insect-proof cartons, and shipping cartons in sealed containers. Seals must visually indicate if the cartons or containers have been opened. The facility must maintain records of all treatments and must periodically be recertified. These conditions have allowed for the safe, effective treatment of many different kinds of articles, as is demonstrated by the track record of irradiation treatment facilities currently operating in Hawaii and other countries.

In § 305.9, paragraph (a)(1) allows irradiation treatment facilities to be located in any State of the United States, except for the Southern States of Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia. When the irradiation regulations were established, these Southern States were identified as having conditions favorable for the establishment of exotic fruit flies. The location restrictions served as an additional safeguard against the possibility that fruit flies could escape from imported articles prior to treatment and become established in the United States.

The regulations do allow irradiation facilities to be located at the maritime ports of Gulfport, MS, Wilmington, NC, and the airport of Atlanta, GA, although no irradiation facilities have been established in these locations. APHIS conducted site-specific evaluations for these three locations and determined that regulated articles can be safely transported to irradiation facilities at these locations under special conditions to mitigate the possible escape of pests of concern.

APHIS has received a petition to open an irradiation facility in McAllen, TX, to treat imported articles or articles moved interstate within the United States. In addition, the irradiation industry has shown considerable interest in locating irradiation facilities in the Southern United States, especially in proximity to the Mexican border. Currently, no irradiation facility is available near the Mexican border. Locating irradiation facilities in the Southern States would allow importers to treat a number of imported articles with irradiation for which no other treatment is available and which currently must be shipped long distances for treatment, such as guavas from Mexico. Locating irradiation facilities in the Southern States would also facilitate the export of certain commodities such as peaches and stone fruits to countries to the south of the United States.

In response to this request and in anticipation of future requests to locate additional irradiation facilities in the Southern States of the United States, we are proposing to establish generic phytosanitary criteria to replace the current criteria for irradiation facilities at the maritime ports of Gulfport, MS, Wilmington, NC, and the airport of Atlanta, GA, and apply to new irradiation treatment facilities in the Southern States of the United States. Under these criteria, in conjunction with the current criteria for irradiation facilities not located in the Southern States, new irradiation facilities could be established in all the Southern States for the treatment of regulated articles that are imported, moved interstate from Hawaii or U.S. territories, or moved interstate from areas quarantined for certain pests of concern. These generic criteria would be supplemented as necessary by additional measures, which would be described in a compliance agreement (discussed below), based on pests of concern associated with specific regulated articles to be treated at the facility and the location of the specific facility.

Using APHIS-approved irradiation facilities located in the United States to treat imported articles offers the advantage of greater ease of monitoring treatment. Using generic criteria for future irradiation facilities located in Southern States would make explicit our criteria for approving these facilities while eliminating the need to undertake rulemaking in order to approve new facilities.

As part of this action, we have prepared a treatment evaluation document (TED) entitled ''Generic Phytosanitary Criteria for Establishing Locations for Irradiation Facilities in the Southern United States.'' Copies of the TED may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** and may be viewed on the Internet on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). In the TED, we concluded that the pest risks from irradiation facilities in the Southern States can be adequately managed

[1] The regulations define an inspector as ''Any individual authorized by the Administrator of APHIS or the Commissioner of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this part.''

through the use of special conditions to mitigate the possible escape of pests of concern.

We are therefore proposing to amend the regulations by replacing the current criteria for irradiation facilities at the maritime ports of Gulfport, MS, Wilmington, NC, and the airport of Atlanta, GA, in paragraph (a)(1) of § 305.9 with generic phytosanitary criteria for any irradiation facility in a Southern State. The new criteria would have to be followed in addition to the current requirements that apply to all irradiation facilities. The proposed generic criteria for new facilities in the Southern States are based on the current conditions for allowing irradiation facilities at the maritime ports of Gulfport, MS, Wilmington, NC, and the airport of Atlanta, GA. As no irradiation facilities have been established in these three locations, the proposed generic criteria would not impact any existing irradiation facilities.

In paragraph (a)(1)(i) of § 305.9, we are proposing that prospective facility operators in Southern States would have to submit a detailed layout of the facility site and its location to APHIS. APHIS would evaluate plant health risks based on the proposed location and layout of the facility site before a facility was approved. APHIS would only approve a proposed facility if the Administrator determines that regulated articles can be safely transported to the facility from the port of entry or points of origin in the United States. Proposed paragraph (a)(1)(ii) of § 305.9 provides that the government of the Southern State in which the facility would be located would also have to concur in writing with the establishment of the irradiation facility; if it does not concur, the State government must provide a written explanation of concern based on pest risks. In instances where the State government does not concur with the proposed facility location, APHIS and the State would need to agree on a strategy to resolve such risks before APHIS approved the facility.

Under this proposal, paragraphs (a)(1)(iii) and (a)(1)(iv) of § 305.9 would require irradiation facilities in Southern States to meet certain conditions that are currently required for irradiation facilities at the maritime ports of Gulfport, MS, or Wilmington, NC, or the airport of Atlanta, GA. These paragraphs would provide, respectively, that untreated articles may not be removed from their packaging prior to treatment under any circumstances, and that facilities must have contingency plans, approved by APHIS, for safely destroying or disposing of regulated articles if the facility was unable to properly treat a shipment.

Under this proposal, paragraph (a)(1)(v) of § 305.9 would only allow irradiation facilities in Southern States to treat articles that are approved by APHIS for treatment at that facility. If, during the approval process for regulated articles at irradiation facilities in Southern States, additional safeguards are deemed necessary during transport or while at the irradiation facilities for the pests of concern, the compliance agreement for the facility would be amended accordingly.

Under proposed paragraph (a)(1)(vi) of § 305.9, arrangements for treatment would need to be made before the departure of a consignment from its port of entry or points of origin in the United States. This would mean that untreated shipments of regulated articles arriving at the facility would not have to wait for an extended period of time for irradiation treatment. The expeditious treatment of the articles would minimize the risk of pests of concern maturing in fruits, vegetables, and other articles.

The current regulations for irradiation facilities at the maritime ports of Gulfport, MS, or Wilmington, NC, or the airport of Atlanta, GA, prohibit the movement of untreated fruits and vegetables through the Southern States and require that the irradiation facility and APHIS agree in advance on the route by which shipments are allowed to move to the irradiation facility. For irradiation facilities in Southern States, we are proposing in paragraph (a)(1)(vi) of § 305.9 that APHIS and the irradiation facility would have to agree in advance about all parameters, such as time, routing, and conveyance, by which every consignment would move from the port of entry or points of origin in the United States to the irradiation facility. In most instances, the route would be determined by establishing the shortest route between the port of entry or points of origin in the United States and the irradiation facility that does not include an area that contains host material for pests of concern during the time of year that the host material is most abundant in the region. This route would then be used regardless of the time of year, as an area free of host material during the time of year that it is most abundant would be unlikely to grow host material at another time of year. This predetermined route would reduce the amount of time that a shipment would have to wait before undergoing irradiation treatment and would reduce the risk that any pests of concern in the shipments would come into contact with host material en route to the irradiation facility.

In addition to the current requirements to ensure the safe transport of regulated material to and from the irradiation facility, we are also proposing to require in paragraph (a)(1)(vii) that the conveyance transporting the regulated article to the irradiation facility would need to be either refrigerated, via motorized refrigeration equipment or other methods including ice or insulation, or air conditioned to a temperature that would minimize the mobility of the pests of concern for the article. Fruits and vegetables are typically transported in refrigerated or air conditioned conveyances in order to preserve freshness of the commodity and prevent development of toxins that may affect their flavor.

The current regulations for irradiation facilities at the maritime ports of Gulfport, MS, or Wilmington, NC, or the airport of Atlanta, GA, require blacklight or sticky paper to be used within the irradiation facility and other trapping methods to be used within the 4 square miles surrounding the facility. To minimize the presence of host material for the pests of concern for irradiation facilities in Southern States generally, we are proposing in paragraph (a)(1)(viii) of § 305.9 that the facility maintain and provide APHIS an updated map identifying places where horticultural or other crops are grown within 4 square miles of the facility. APHIS will use this information to determine if any host material of concern is present. To help prevent establishment of pests in the unlikely event that they escape despite the required precautions, the location of any host material within 4 square miles of the facility would necessitate specific trapping or other pest monitoring activities to help prevent establishment of any escaped pests of concern, which would be funded by the facility and described in the compliance agreement. All trapping and pest monitoring activities would need to be approved by APHIS. Such activities would include the use of blacklight or sticky paper within the irradiation facility, as required in the current regulations for irradiation facilities at the maritime ports of Gulfport, MS, or Wilmington, NC, or the airport of Atlanta, GA. The irradiation facility would also need to have a pest management plan within the facility.

Irradiation facilities would also be required to comply with any additional requirements that APHIS might require for a particular facility based on local conditions and any other risk factors of

concern. This could include inspection for certain pests for which irradiation is not an approved treatment. Proposed paragraph (a)(1)(ix) of § 305.9 would require that facilities comply with any additional APHIS requirements. These requirements would be contained in a compliance agreement, which is currently required for all facilities in paragraph (c) of § 305.9. In that paragraph, we are proposing to add that compliance agreements for facilities in Southern States may contain additional provisions.

Irradiation Facilities in All the United States

Currently, as part of the approval process for irradiation facilities, APHIS considers whether a proposed irradiation facility is located within the local commuting area for APHIS employees so that they will be able to perform the oversight and monitoring activities required by § 305.9. When imported articles are to be treated at a facility, APHIS also considers whether the facility is located within an area over which the U.S. Department of Homeland Security [2] has customs authority for enforcement purposes. We are proposing to revise paragraph (e), which contains requirements for monitoring and interagency agreements for irradiation treatment facilities, to require all irradiation facilities to be located within the local commuting area for APHIS employees [3] for oversight and monitoring purposes. For facilities treating imported articles, we are also proposing to require in paragraph (e)(1) of § 305.9, which pertains to monitoring of such facilities, that the location of the facility would have to be within an area over which the U.S. Department of Homeland Security has customs authority for enforcement purposes.

If regulatory oversight and requirements by other agencies also apply, we are also proposing to require in paragraph (b) of § 305.9, which describes requirements for approval of facilities, that they must concur in writing with the establishment of the facility prior to APHIS approval. For example, irradiation facilities that use a nuclear source would have to receive concurrence from the Nuclear Regulatory Commission, which has jurisdiction over nuclear facilities and materials.

Irradiation of Fruits From India and Thailand

Currently, the regulations in parts 318 and 319 allow the importation of certain fruits from India (mangos), Mexico (guavas), Thailand (litchis, longans, mangoes, mangosteens, pineapples, and rambutans), and Vietnam (dragon fruits), and the interstate movement of several fruits and vegetables from Hawaii, after they have received irradiation treatment. While fruits and vegetables moving from Mexico, Vietnam, and Hawaii may receive irradiation at either the point of origin or upon arrival in the mainland United States, fruit from India and Thailand must be treated prior to arrival in the United States. The regulations in § 305.9, however, allow for irradiation treatment of articles either prior to or after arrival in the United States, provided an APHIS-approved facility is available. The regulations require safeguards to ensure that regulated articles are safely transported to the irradiation facility from the port of arrival without escape of plant pests in transit or at the irradiation facility. These safeguards have successfully prevented the introduction or dissemination of plant pests into or through the United States via the importation or interstate movement of irradiated articles since 1996 when irradiation was first used as a phytosanitary treatment.

We are proposing to amend § 319.56–46 to allow for irradiation treatment of mangos from India in either India or the United States and § 319.56–47 to allow for irradiation treatment of tropical fruits from Thailand in either Thailand or the United States. Fruit from India and Thailand would still be subject to requirements designed to ensure safe transportation of the articles, including insect-proof packaging, inspection, and issuance of a phytosanitary certificate by the national plant protection organization of the country of export. Based on our experience with India's and Thailand's compliance with these requirements for fruit currently irradiated in these countries, we are confident that these countries have the ability to comply with all APHIS requirements and fruit from these countries could be safely treated in the United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Order 12866, and an analysis of the potential economic effects of this action on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. 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).

The proposed rule would allow for irradiation treatment of tropical fruits from India and Thailand in either the exporting country or the United States and for the establishment of irradiation facilities in the Southern United States. Using APHIS-approved irradiation facilities located in the United States to treat imported articles offers the advantage of greater ease of monitoring treatment.

The proposed rule would benefit U.S. entities by clearly presenting the criteria that would govern the approval of additional irradiation facilities in the Southern United States, thereby facilitating their establishment. APHIS has not identified any costs associated with establishing the generic criteria for irradiation facility approval described in this the proposed rule. Beyond helping to make the approval of future irradiation facilities in the Southern United States an efficient process, we do not anticipate that the criteria set forth in the proposed rule would result in economic impacts or any significant costs for U.S. entities, large or small based on the available data. APHIS is, however, interested in receiving comments on the potential economic costs associated with the proposed criteria. These criteria include requiring facilities to be within the local commuting area for APHIS employees and within an area over which the U.S. Department of Homeland Security customs authority for enforcement purposes, obtaining written concurrence from the government of the Southern State in which the facility would be located, providing a detailed layout of the facility location, maintaining and providing an updated map identifying places where horticultural or other crops are grown within 4 square miles of the facility, trapping or other pest monitoring activities, agreeing in advance about all parameters by which the consignment will move from the point of entry or origin to the treatment facility, using refrigerated or air

[2] The U.S. Department of Homeland Security is assigned authority to accept entries of merchandise, to collect duties, and to enforce the provisions of the customs and navigation laws in force.

[3] Commuting area would be determined by contacting the local APHIS Plant Protection and Quarantine office, State Plant Health Director, located in each State, Eastern Regional Office, or Western Regional Office.

conditioned conveyance to transport articles to the facility, ensuring that cartons are off-loaded from conveyances in a safeguarded environment, maintaining physical separation of treated articles from untreated articles, and developing a contingency plan for safely destroying or disposing of untreated or improperly treated articles.

The entities potentially affected by the proposed rule would be the eventual clients of irradiation facilities established in the southern United States. They can be largely classified within the following two industries: Post Harvest Crop Activities (except cotton ginning) (NAICS 115114), and Fresh Fruit and Vegetable Merchant Wholesalers (NAICS 424480).

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) No retroactive effect will be given to this rule; and (2) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with providing generic criteria for new irradiation treatment facilities in the Southern States of the United States, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (A link to Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

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–2009–0100. Please send a copy of your comments to: (1) Docket No. APHIS–2009–0100, 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.

This proposed rule establishes criteria for irradiation facilities in the Southern States. Implementing this proposed rule will require respondents to provide APHIS with an updated map identifying horticultural/crop areas and contingency plans, approved by APHIS, for safely destroying or disposing of regulated articles.

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 2.3333 hours per response.

Respondents: Irradiation facilities in Southern United States.

Estimated annual number of respondents: 3.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 6.

Estimated total annual burden on respondents: 14 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

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

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 parts 305 and 319 as follows:

PART 305—PHYTOSANITARY TREATMENTS

1. The authority citation for part 305 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 305.9 is amended as follows:

a. By revising paragraph (a)(1) to read as set forth below.

b. In paragraph (b), by adding a sentence after the first sentence to read as set forth below.

c. By adding a sentence after the paragraph (c) introductory text heading to read as set forth below.

d. In paragraph (e) introductory text, by adding a sentence after the second sentence to read as set forth below.

e. By adding a sentence after the paragraph (e)(1) introductory text heading to read as set forth below.

§ 305.9 Irradiation treatment requirements.

* * * * *

(a) * * *

(1) Where certified irradiation facilities are available, an approved irradiation treatment may be conducted for any imported regulated article either prior to shipment to the United States or in the United States. For any regulated article moved interstate from Hawaii or U.S. territories, irradiation treatment may be conducted either prior to movement to the mainland United States or in the mainland United States. Irradiation facilities may be located in any State on the mainland United States. For irradiation facilities located in the States of Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia, the following additional conditions must be met:

(i) Prospective facility operators must submit a detailed layout of the facility site and its location to APHIS. APHIS will evaluate plant health risks based on the proposed location and layout of the facility site. APHIS will only approve a proposed facility if the Administrator determines that regulated articles can be safely transported to the facility from port of entry or points of origin in the United States.

(ii) The government of the State in which the facility is to be located must concur in writing with the establishment of the facility or, if it does not concur, must provide a written explanation of concern based on pest risks. In instances where the State government does not concur with the proposed facility location, APHIS and the State will agree on a strategy to resolve the pest risk concerns prior to APHIS approval.

(iii) Untreated articles may not be removed from their packaging prior to treatment under any circumstances.

(iv) The facility must have contingency plans, approved by APHIS, for safely destroying or disposing of regulated articles if the facility is unable to properly treat a shipment.

(v) The facility may only treat articles approved by APHIS for treatment at the facility. Approved articles will be listed in the compliance agreement required in paragraph (c)(1)(i) of this section.

(vi) Arrangements for treatment must be made before the departure of a consignment from its port of entry or points of origin in the United States. APHIS and the facility must agree on all parameters, such as time, routing, and conveyance, by which the consignment will move from the port of entry or points of origin in the United States to the treatment facility.

(vii) Regulated articles must be conveyed to the facility in a refrigerated (via motorized refrigeration equipment or other methods including ice or insulation) or air-conditioned conveyance at a temperature that minimizes the mobility of the pests of concern for the article.

(viii) The facility must maintain and provide APHIS with an updated map identifying places where horticultural or other crops are grown within 4 square miles of the facility. Proximity of host material to the facility will necessitate trapping or other pest monitoring activities to help prevent establishment of any escaped pests of concern, as approved by APHIS; these activities will be listed in the compliance agreement required in paragraph (c)(1)(i) of this section. The treatment facility must have a pest management plan within the facility.

(ix) The facility must comply with any additional requirements that APHIS may require to prevent the escape of plant pests during transport to and from the irradiation facility itself, for a particular facility based on local conditions, and for any other risk factors of concern. These activities will be listed in the compliance agreement required in paragraph (c)(1)(i) of this section.

* * * * *

(b) * * * Other agencies that have regulatory oversight and requirements must concur in writing with the establishment of the facility prior to APHIS approval.

(c) * * * Compliance agreements for facilities located in States listed in paragraph (a)(1) of this section may also contain additional provisions as described in paragraphs (a)(1)(i) through (a)(1)(ix) of this section. * * *

* * * * *

(e) * * * Facilities must be located within the local commuting area for APHIS employees for inspection purposes.

(1) * * * Facilities shall be located within an area over which the U.S. Department of Homeland Security is assigned authority to accept entries of merchandise, to collect duties, and to enforce the provisions of the customs and navigation laws in force. * * *

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. 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.

§ 319.56–46 [Amended]

4. Section § 319.56–46 is amended as follows:

a. In paragraph (a), by removing the words ''in India''.

b. In paragraph (e) introductory text, by removing the words ''certifying that the fruit received the required irradiation treatment. The phytosanitry certificate must also bear'' and adding the word ''with'' in their place.

§ 319.56–47 [Amended]

5. Section 319.56–47 is amended as follows:

a. In paragraph (b), by removing the second sentence.

b. In paragraph (c)(1), by removing the words ''that the litchi were treated with irradiation as described in paragraph (b) of this section and''.

c. In paragraph (c)(2), by removing the words ''with an additional declaration stating that the longan, mango, mangosteen, pineapple, or rambutan were treated with irradiation as described in paragraph (b) of this section''.

Done in Washington, DC, this 22nd day of September 2011.

Edward Avalos,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2011–25092 Filed 9–28–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 505

Modification of Interlibrary Loan Fee Schedule; Correction

AGENCY: Agricultural Research Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: The proposed rule published in the **Federal Register** on September 16, 2011 (76 FR 57681) announced Agricultural Research Service intent to seek comments on renewing the National Agricultural Library's regulation to increase the interlibrary loan fees. This document corrects the RIN number.

FOR FURTHER INFORMATION CONTACT: Kay Derr, 301–504–5879.

Correction

In the **Federal Register** of September 16, 2011, in FR Doc. 2011–23723, on pages 57681–57682 in the heading section, correct the RIN number to read as follows: RIN 0518–AA04

Yvette Anderson,

Federal Register Liaison Officer for Agricultural Research Service.

[FR Doc. 2011–24367 Filed 9–28–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1040; Directorate Identifier 2011–CE–029–AD]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aero Industries S.p.A. Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Piaggio Aero Industries S.p.A. Model P–180 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

One event of in-flight baggage door opening occurred on an in-service aeroplane due to a defective locking mechanism or installation thereof; the BAG DOOR warning light went on properly before the event, but was ignored by the pilot, who misinterpreted it as a false warning.

NOTE: False in-service BAG DOOR warnings had occurred on other P.180 aeroplanes, and Piaggio Aero Industries (PAI) had issued Service Bulletin (SB) No. 80–0223 revision 1 to improve the installation of the baggage door warning microswitch and to modify the locking mechanism if necessary.

This condition, if not detected and corrected, could lead to in-flight detachment of the door, which could hit and damage the left propeller and/or the vertical or horizontal stabilizer, possibly resulting in loss of control of the aeroplane, or in injuries to persons or damage to property on the ground.

Instances of the baggage door open light illuminating have occurred when the baggage door was not open. This condition, if not corrected, could result in the pilot disregarding a valid warning. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by November 14, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Piaggio Aero Industries S.p.A.-Airworthiness Office, Via Luigi Cibrario, 4–16154 Genova-Italy; phone: +39 010 6481353; fax: +39 010 6481881; e-mail: *airworthiness@piaggioaero.it;* Internet: *http://www.piaggioaero.com/#/en/after-sales/service-support.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; e-mail: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1040; Directorate Identifier 2011–CE–029–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://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2011–0132, dated July 12, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

One event of in-flight baggage door opening occurred on an in-service aeroplane due to a defective locking mechanism or installation thereof; the BAG DOOR warning light went on properly before the event, but was ignored by the pilot, who misinterpreted it as a false warning.

NOTE: false in-service BAG DOOR warnings had occurred on other P.180 aeroplanes, and Piaggio Aero Industries (PAI) had issued Service Bulletin (SB) No. 80–0223 revision 1 to improve the installation of the baggage door warning microswitch and to modify the locking mechanism if necessary.

This condition, if not detected and corrected, could lead to in-flight detachment of the door, which could hit and damage the left propeller and/or the vertical or horizontal stabilizer, possibly resulting in loss of control of the aeroplane, or in injuries to persons or damage to property on the ground.

This AD requires an inspection of the locking mechanism of the baggage door and its proper adjustment, in accordance with PAI SB No. 80–0289 revision 1; if baggage door lockpins do not reach the correct engagement, or false BAG DOOR warnings were reported by flight crew, this AD requires also a modification of the door mechanism in accordance with PAI SB No. 80–0223 revision 1.

Instances of the baggage door open light illuminating have occurred when the baggage door was not open. This condition, if not corrected, could result in the pilot disregarding a valid warning. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Piaggio Aero Industries S.p.A. has issued Service Bulletin No. 80–0223,

Revision 1, dated July 31, 2009; and Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

We estimate that this proposed AD will affect 102 products of U.S. registry. We also estimate that it would take about 29 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $4,482 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $708,594, or $6,947 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Piaggio Aero Industries S.p.A.: Docket No. FAA–2011–1040; Directorate Identifier 2011–CE–029–AD.

Comments Due Date

(a) We must receive comments by November 14, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Piaggio Aero Industries S.p.A. P–180 Airplane Model P–180 airplanes, serial numbers affected 1002 and 1004 through 1189, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 52: Doors.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

One event of in-flight baggage door opening occurred on an in-service aeroplane due to a defective locking mechanism or installation thereof; the BAG DOOR warning light went on properly before the event, but was ignored by the pilot, who misinterpreted it as a false warning.

NOTE: false in-service BAG DOOR warnings had occurred on other P.180 aeroplanes, and Piaggio Aero Industries (PAI) had issued Service Bulletin (SB) No. 80–0223 revision 1 to improve the installation of the baggage door warning microswitch and to modify the locking mechanism if necessary.

This condition, if not detected and corrected, could lead to in-flight detachment of the door, which could hit and damage the left propeller and/or the vertical or horizontal stabilizer, possibly resulting in loss of control of the aeroplane, or in injuries to persons or damage to property on the ground.

This AD requires an inspection of the locking mechanism of the baggage door and its proper adjustment, in accordance with PAI SB No. 80–0289 revision 1; if baggage door lockpins do not reach the correct engagement, or false BAG DOOR warnings were reported by flight crew, this AD requires also a modification of the door mechanism in accordance with PAI SB No. 80–0223 revision 1.

Instances of the baggage door open light illuminating have occurred when the baggage door was not open. This condition, if not corrected, could result in the pilot disregarding a valid warning.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) If false in-flight BAG DOOR indications have occurred, within 165 hours time-in-service (TIS) after the effective date of this AD or within the next 60 days after the effective date of this AD, whichever occurs first, do the following actions:

(i) Modify the locking mechanism following the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Service Bulletin No. 80–0223, Revision 1, dated July 31, 2009.

(ii) Inspect the screws on the locking device installed on the door handle for proper tightness and correct as necessary after applying a thread locker following Part

D of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011.

(2) If false in-flight BAG DOOR indications have not occurred, within 165 hours TIS after the effective date of this AD or within the next 60 days after the effective date of this AD, whichever occurs first, do the following actions:

(i) Inspect the baggage door and the baggage door locking mechanism and do the necessary corrective actions following Parts A and B of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011.

(ii) If after the inspection required by paragraph (f)(2)(i) of this AD, the baggage door adjustment procedure was not required or was required and was done successfully, inspect the screws on the locking device on the door handle with the proper tightness. Take any necessary corrective actions after applying a thread locker following Part D of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011.

(iii) If after the inspection required by paragraph (f)(2)(i) of this AD, the baggage door adjustment was required and was not done successfully, within the next 165 hours TIS after the effective date of this AD or within the next 60 days after the effective date of this AD, whichever occurs first, do the following actions:

(A) Modify the locking mechanism following the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Service Bulletin No. 80–0223, Revision 1, dated July 31, 2009.

(B) Inspect the screws on the locking device installed on the door handle for proper tightness and correct as necessary after applying a thread locker following Part D of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011.

(3) If the inspections specified in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, dated November 11, 2010, and the modification, if required, specified in Piaggio Aero Industries S.p.A. Service Bulletin No. 80–0223, Revision 1, dated July 31, 2009, were done before the effective date of this AD, we will allow ''unless already done'' credit to comply with the actions required in this AD. After the effective date of this AD, you must use Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011, to comply with this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; e-mail: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2011–0132, dated July 12, 2011; Piaggio Aero Industries S.p.A. Service Bulletin No. 80–0223, Revision 1, dated July 31, 2009; Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, dated November 11, 2010; and Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011, for related information. For service information related to this AD, contact Piaggio Aero Industries S.p.A–Airworthiness Office, Via Luigi Cibrario, 4–16154 Genova-Italy; phone: +39 010 6481353; fax: +39 010 6481881; e-mail: *airworthiness@piaggioaero.it;* Internet: *http://www.piaggioaero.com/#/en/after-sales/service-support.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri on September 20, 2011.

Wes Ryan,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–25006 Filed 9–28–11; 8:45 am]

BILLING CODE 4910–13–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2011–7]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry and request for comments.

SUMMARY: The United States Copyright Office is preparing to conduct proceedings in accordance with provisions added by the Digital Millennium Copyright Act which provide that the Librarian of Congress, upon the recommendation of the Register of Copyrights, may exempt certain classes of works from the prohibition against circumvention of technological measures that control access to copyrighted works. The purpose of this rulemaking proceeding is to determine whether there are particular classes of works as to which users are, or are likely to be, adversely affected in their ability to make noninfringing uses due to the prohibition on circumvention. This notice requests written comments from all interested parties, including representatives of copyright owners, educational institutions, libraries and archives, scholars, researchers and members of the public, in order to elicit evidence on whether noninfringing uses of certain classes of works are, or are likely to be, adversely affected by this prohibition on the circumvention of measures that control access to copyrighted works.

DATES: Written comments must be received no later than December 1, 2011. A notice of proposed rulemaking will be published in December 2011 that will identify proposed classes of works and solicit comments on those proposed classes, which will be no later than February 15, 2012.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A comment

page containing a comment form will be posted on the Copyright Office Web site at *http://www.copyright.gov/1201/comment-forms.* The online form contains fields for required information including the name and organization of the commenter, as applicable, and the ability to upload comments as an attachment. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Copyright Office at 202–707–8380 for special instructions. *See* **SUPPLEMENTARY INFORMATION** section for information about requirements and formats of submissions.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, Copyright GC/I&R, PO Box 70400, Washington, DC 20024–0400. Telephone: (202) 707–8380; telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The United States Copyright Office announces the initiation of a rulemaking to determine whether there are any classes of copyrighted works for which noninfringing uses are, or in the next three years are likely to be, adversely affected by the prohibition on circumvention of technological measures that control access to copyrighted works. *See* 17 U.S.C. 1201(a)(1)(C).

1. Mandate for Rulemaking Proceeding

The Digital Millennium Copyright Act, Public Law 105–304 (1998), amended title 17 of the United States Code to add Chapter 12, which among other things prohibits circumvention of access control technologies employed by or on behalf of copyright owners to protect their works. Specifically, subsection 1201(a)(1)(A) provides, *inter alia,* that ''No person shall circumvent a technological measure that effectively controls access to a work protected under this title.''

Subparagraph (B) limits this prohibition. It provides that prohibition against circumvention ''shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title'' as determined in this rulemaking.

Subparagraph (C) provides that every three years, the Librarian of Congress, upon the recommendation of the Register of Copyrights (who is to consult with the Assistant Secretary for Communications and Information of the Department of Commerce) must ''make the determination in a rulemaking proceeding for purposes of subparagraph (B) of whether persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition under subparagraph (A) in their ability to make noninfringing uses under this title of a particular class of copyrighted works.'' The Librarian, on the recommendation of the Register, has thus far made four such determinations. This notice announces the commencement of the fifth rulemaking proceeding under section 1201(a)(1)(C).

The exemptions promulgated by the Librarian in the first rulemaking were in effect for the 3-year period from October 28, 2000, through October 28, 2003. *See Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies,* 65 FR 64556, 64564, published in the Federal Register October 27, 2000 (hereinafter Final Reg. 2000). On October 28, 2003, the Librarian of Congress published the second determination as to classes of works to be exempted from the prohibition. *Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies,* 68 FR 62011, 62013, published in the Federal Register October 31, 2003 (hereinafter Final Reg. 2003). The four exemptions created in the second anticircumvention rulemaking remained in effect for a 3-year period. On November 27, 2006, the Librarian of Congress published the third determination. *Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies,* 71 FR 68472, 68480, published in the **Federal Register** November 27, 2006 (hereinafter Final Reg. 2006). The six exemptions established in the third anticircumvention rulemaking remained in effect until August 6, 2010. On August 6, 2010, the Librarian of Congress published the fourth determination, which will remain in effect until the conclusion of the next rulemaking. *Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies,* 75 FR 47464, published in the **Federal Register** August 6, 2010 (hereinafter Final Reg. 2010). All four of the previous determinations by the Librarian of Congress were made upon the recommendation of the Register of Copyrights following extensive rulemaking proceedings.

2. Background

Title I of the Digital Millennium Copyright Act was, *inter alia,* the congressional fulfillment of obligations of the United States under the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. For additional information on the historical background and the legislative history of Title I, *see Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies,* 64 FR 66139, 66140 (1999) [*http://www.loc.gov/copyright/fedreg/1999/64fr66139.html*].

Section 1201 of title 17 of the United States Code prohibits two general types of activity: (1) The conduct of ''circumvention'' of technological protection measures that control access to copyrighted works and (2) trafficking in any technology, product, service, device, component, or part thereof that protects either ''access'' to a copyrighted work or that protects the ''rights of the copyright owner,'' if that device or service meets one of three conditions. The first type of activity, the conduct of circumvention, is prohibited in section 1201(a)(1). The latter activities, trafficking in devices or services that circumvent ''access'' or ''the rights of the copyright owner,'' are contained in sections 1201(a)(2) and 1201(b) respectively. In addition to these prohibitions, section 1201 also includes a series of section-specific limitations and exemptions to the prohibitions of section 1201.

A. The Anticircumvention Provision at Issue

Subsection 1201(a)(1) applies when a person who is not authorized by the copyright owner to gain access to a work does so by circumventing a technological measure put in place with the authority of the copyright owner to control access to the work. *See Report of the House Committee on Commerce on the Digital Millennium Copyright Act of 1998,* H.R. Rep. No. 105–551, pt. 2, at 36 (1998) (hereinafter Commerce Comm. Report).

That section provides that ''No person shall circumvent a technological

measure that effectively controls access to a work protected under this title.'' 17 U.S.C. 1201(a)(1)(A) (1998).

The relevant terms are defined:

(3) As used in this subsection—

(A) to ''circumvent a technological measure'' means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner; and

(B) a technological measure ''effectively controls access to a work'' if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work. 17 U.S.C. 1201(a)(3).

B. Scope of the Rulemaking

The statutory focus of this rulemaking is limited to one subsection of section 1201: the prohibition on the conduct of circumvention of technological measures that control access to copyrighted works. 17 U.S.C. 1201(a)(1)(C) [*http://www.copyright.gov/title17/92chap12.html#1201*]. The Librarian of Congress has no authority to limit either of the anti-trafficking provisions contained in subsections 1201(a)(2) or 1201(b). 17 U.S.C. 1201(a)(1)(E). Moreover, for a proposed exemption to be considered in this rulemaking, there must be a causal connection between the prohibition in 1201(a)(1) and the adverse effect on noninfringing uses.

This rulemaking addresses only the prohibition on the conduct of circumventing measures that control ''access'' to copyrighted works, *e.g.,* decryption or hacking of access controls such as passwords or serial numbers. The structure of section 1201 is such that there exists no comparable prohibition on the conduct of circumventing technological measures that protect the ''rights of the copyright owner,'' *e.g.,* the section 106 rights to reproduce, adapt, distribute, publicly perform, or publicly display a work. Circumventing a technological measure that protects these section 106 rights of the copyright owner is governed not by section 1201, but rather by the traditional copyright rights and the applicable limitations in the Copyright Act. For example, if a person having lawful access to a work circumvents a measure that prohibits printing or saving an electronic copy of an article, there is no provision in section 1201 that precludes this activity. Instead, it would be actionable as copyright infringement of the section 106 right of reproduction unless an applicable limitation applied, *e.g.,* fair use. The trafficking in, *inter alia,* any device or service that enabled others to circumvent such a technological protection measure may, however, be actionable under section 1201(b).

On the other hand, because there is a prohibition on the act of circumventing a technological measure that controls access to a work, and since traditional Copyright Act limitations are not defenses to the act of circumventing a technological measure that controls access, Congress chose to create the current rulemaking proceeding as a ''fail-safe mechanism'' to monitor the effect of the anticircumvention provision in section 1201(a)(1)(A). Commerce Comm. Report, at 36. This anticircumvention rulemaking is authorized to monitor the effect of the prohibition against ''access'' circumvention on noninfringing uses of copyrighted works. In this triennial rulemaking proceeding, effects on noninfringing uses that are unrelated to section 1201(a)(1)(A) may not be considered. 17 U.S.C. 1201(a)(1)(C).

C. Burden of Proof

In the first rulemaking, the Register concluded from the language of the statute and the legislative history that a determination to exempt a class of works from the prohibition on circumvention must be based on a showing that the prohibition has or is likely to have a substantial adverse effect on noninfringing uses of a particular class of works. (The meaning of the phrase ''class of works'' is described in section E of this Notice of Inquiry.) It was determined that proponents of an exemption bear the burden of proof that an exemption is warranted for a particular class of works and that the prohibition is presumed to apply to all classes of works unless an adverse impact has been shown. *See* Commerce Comm. Report, at 37 and *see also,* Final Reg. 2000, 65 FR at 64558.

The ''substantial'' adverse effect requirement has also been described as a requirement that the proponent of an exemption must demonstrate ''distinct, verifiable, and measurable impacts,'' and more than ''*de minimis* impacts.'' *See* Final Reg. 2003, 68 FR at 62013. Whatever label one uses, proponents of an exemption bear the burden of providing sufficient evidence under this standard to support an exemption. How much evidence is sufficient will vary with the factual context of the alleged harm. Further, proof of harm is never the only consideration in the rulemaking process, and therefore the sufficiency of the evidence of harm will always be relative to other considerations, such as, the availability of the affected works for use, the availability of the works for nonprofit archival, preservation, and educational purposes, the impact that the prohibition has on criticism, comment, news reporting, teaching, scholarship, or research, the effect of circumvention on the market for or value of copyrighted works, and any other relevant factors.

In order to meet the burden of proof, proponents of an exemption must provide evidence either that actual harm currently exists or that it is ''likely'' to occur in the ensuing 3-year period. Actual instances of verifiable problems occurring in the marketplace are generally necessary in order to prove actual harm. The most compelling cases of actual harm will be based on first-hand knowledge of such problems. Circumstantial evidence may also support a claim of present or likely harm, but such evidence must also reasonably demonstrate that a measure protecting access was the cause of the harm and that the adversely affected use was, in fact, noninfringing. ''Likely'' adverse effects may also support an exemption. This standard of ''likelihood'' requires proof that adverse effects are more likely than not to occur. Claims based on ''likely'' adverse effects cannot be supported by speculation alone. *See Staff of House Committee on the Judiciary, 105th Cong., Section-by-Section Analysis of H.R. 2281* as Passed by the United States House of Representatives on August 4, 1998, (hereinafter House Manager's Report), at 6, (an exemption based on ''likely'' future adverse impacts during the applicable period should only be made ''in extraordinary circumstances in which the evidence of likelihood is highly specific, strong and persuasive.''). Conjecture alone is insufficient to support a finding of ''likely'' adverse effect. Final Reg. 2000, 65 FR at 64559. Although a showing of ''likely'' adverse impact will necessarily involve prediction, the burden of proving that the expected adverse effect is more likely than other possible outcomes rests firmly on the proponent of the exemption.

The identification of existing or likely problems is not, however, the end of the analysis. In order for an exemption of a particular class of works to be warranted, a proponent must show that such problems justify an exemption in light of all of the relevant facts. The identification of isolated or anecdotal problems will be generally insufficient to warrant an exemption. Similarly, the mere fact that the digital format would be more convenient to use for

noninfringing purposes is generally insufficient factual support for an exemption. Further, purely theoretical critiques of section 1201 cannot satisfy the requisite showing. House Manager's Report, at 6. Proponents of exemptions must show sufficient harm to warrant an exemption from the default rule established by Congress—the prohibition against circumvention.

There is a presumption that the section 1201 prohibition will apply to any and all classes of works, including previously exempted classes, unless a new showing is made that an exemption is warranted. Final Reg. 2000, 65 FR at 64558. Exemptions are reviewed de novo and prior exemptions will expire unless sufficient new evidence is presented in each rulemaking that the prohibition has or is likely to have an adverse effect on noninfringing uses. The facts and argument that supported an exemption during any given 3-year period may be insufficient within the context of the marketplace in a different 3-year period. Similarly, proposals that were not found to justify an exemption in any particular rulemaking could find factual support in the context and on the record of another rulemaking.

Evidence in support or in opposition to an exemption should be contained in the initial comments or, after publication of the proposed classes in the **Federal Register**, in the comments on the proposed exemptions. The purpose of this rulemaking is to survey interested parties in the digital environment to discover whether section 1201(a)(1) is adversely affecting noninfringing uses of particular classes of copyrighted works. The proposals received in the initial comments will frame the inquiry throughout the rest of the rulemaking process. The comments submitted in response to this Notice of Inquiry will be posted on the Copyright Office Web site shortly after submission, and a Notice of Proposed Rulemaking identifying the classes of works proposed will be published in the **Federal Register** shortly thereafter.[1] The Notice of Proposed Rulemaking will invite copyright owners and other interested parties to offer their comments in support of or opposition to the proposed classes. Comments responsive to the proposed classes may also propose modest refinements to the proposed classes and supply additional evidence, but may not propose completely new classes of works. Since opponents to exemptions have only one comment period to provide written responses to the exemptions proposed, opponents should have sufficient notice of the exemptions to be addressed in the rulemaking. Copyright owners and other interested parties, however, should be vigilant in monitoring classes proposed in the initial comment period that may implicate their interests as such classes may be further refined in the ensuing rulemaking process.

The Office will post all of the comments, hearing transcripts, and other relevant material in this rulemaking proceeding, as the Office has done since the inception of this rulemaking proceeding, on the Copyright Office's Web site at: *http://www.copyright.gov/1201*.[2]

The Copyright Office will also conduct a series of hearings on the proposed exemptions in the Spring, in Washington DC and possibly in California. These hearings will offer proponents and opponents of exemptions an opportunity to present arguments and answer questions from the Register and her staff. These hearings—the time, date and subject matter of which will be announced early in 2012—will not provide a forum in which to raise new proposals or to submit wholly new evidence. Evidence that demonstrates how a technological measure operates and affects noninfringing uses as well as evidence that is responsive to earlier disputes raised in the comment process is welcomed, and is encouraged, at these hearings. However, the hearings may not be used as a vehicle for surprise or to present untimely proposals.

The Register is also likely to pose post-hearing questions to specific parties or witnesses that participated in the rulemaking proceeding. These questions have historically sought clarification of legal and factual questions, including specific requests to explain the operation of a technological measure at issue. Such post-hearing questions should not be construed as a general public post-hearing comment phase—there simply will not be sufficient time to consider another round of general public comments before the announcement of the newly exempted classes—but rather are invitations addressed to specific witnesses who have offered testimony on an issue to provide further clarification in response to specific questions from the Register. The questions and the responses to the questions will be posted on the Copyright Office's website after the responses have been received.

D. Availability of Works in Unprotected Formats

Other statutory considerations must also be balanced with evidence of adverse effects attributable to the prohibition. In making her recommendation to the Librarian, the Register is instructed to consider the availability for use of copyrighted works. 17 U.S.C. 1201(a)(1)(C)(i). This inquiry demands that the Register consider whether ''works'' protected by technological measures that control access are also available in the marketplace in formats that are unprotected. The fact that a ''work'' (in contrast to a particular ''copy'' of a work) is available in a format without technological protection measures may be significant because the unprotected formats might allow the public to make noninfringing uses of the work even though other formats of the work would not. For example, in the first rulemaking, many users claimed that the technological measures on motion pictures contained on Digital Versatile Disks (DVDs) restricted noninfringing uses of the motion pictures. A balancing consideration was that the record revealed at that time that the vast majority of these works were also available in analog format on VHS tapes. Final Reg. 2000, 65 FR at 64568. Thus, the full range of availability of a work for use is necessary to consider in assessing the need for an exemption to the prohibition on circumvention.

Another consideration relating to the availability for use of copyrighted works is whether the measure supports a distribution model that benefits the public generally. For example, while a measure may limit the length of time that a work may be accessed (time-limited) or may limit the scope of access (scope-limited), *e.g.,* access to only a portion of work, those limitations may benefit the public by providing ''use-facilitating'' models that allow users to obtain access to works at a lower cost than they would otherwise be charged were such restrictions not in place. If there is sufficient evidence that particular classes of works would not be offered at all without the protection afforded by technological protection measures that control access, this evidence must be considered. House Manager's Report, at 6. Accord, Final Reg. 2000, 65 FR at 64559. Thus, the Register's inquiry must assess any benefits to the public resulting from the

[1] *See infra* for a discussion of proposals raised after the initial comment period has expired.

[2] If a comment includes attached material that appears to be protected by copyright and there is no indication that the material was attached with permission of the copyright owner, the attached material will not be placed on the Office's Website. If such a material is available on the Internet, the comment should identify where the material may be found.

prohibition as well as the adverse effects that may be established.

E. The Scope of the Term ''Class of Works''

Section 1201 does not define a critical term for the rulemaking process: a ''class of works.'' With respect to this issue and others, commenters should familiarize themselves with the Register's recommendation and the Librarian's determination in the first rulemaking and in the subsequent three rulemakings, since many of the issues which were unsettled at the start of the first rulemaking have been addressed and developed in the four determinations. While the approach taken in resolving the issues raised in these rulemakings may continue to develop in this and subsequent proceedings, interested parties should assume that the standards developed thus far will continue to apply in the current proceeding. Of course, commenters may argue for adoption of alternative approaches,[3] but a persuasive case will have to be made to warrant reconsideration of previous decisions regarding interpretation of section 1201.

In the first rulemaking, the Register elicited views on the scope and meaning of the term ''class of works.'' After review of the statutory language, the legislative history and the extensive record in the proceeding [*see* Final Reg., 65 FR at 64557 for a description of the record in the last rulemaking proceeding], the Register reached certain conclusions on the scope of this term. [For a more detailed discussion, *see* Final Reg., 65 FR at 64559.]

The Register found that the statutory language required that the Librarian identify a ''class of works'' primarily based upon attributes of the works themselves, and not by reference to some external criteria such as the intended use or the users of the works. The phrase ''class of works'' connotes that the shared, common attributes of the ''class'' relate to the nature of authorship in the ''works.'' Thus a ''class of works'' was intended to be a ''narrow and focused subset of the broad categories of works of authorship * * * identified in section 102.'' Commerce Comm. Report, at 38. The starting point for a proposed exemption of a particular class of works must be the section 102 categories of authorship: literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works.

This determination is supported by the House Manager's Report which discussed the importance of appropriately defining the proper scope of the exemption. House Manager's Report, at 7. The legislative history stated that it would be highly unlikely for all literary works to be adversely affected by the prohibition and therefore, determining an appropriate subcategory of the works in this category would be the goal of the rulemaking. *Id.*

Therefore, the Register concluded that the starting point for identifying a particular ''class of works'' to be exempted must be one of the section 102 categories. Final Reg., 65 FR at 64559–64561. From that starting point, it is likely that the scope or boundaries of a particular class would need to be further limited to remedy the particular harm to noninfringing uses identified in the rulemaking.

In the first anticircumvention rulemaking, the Register recommended and the Librarian agreed that two classes of works should be exempted:

(1) Compilations consisting of lists of websites blocked by filtering software applications; and

(2) Literary works, including computer programs and databases, protected by access control mechanisms that fail to permit access because of malfunction, damage or obsoleteness.

While the first class exempted fits comfortably within the approach to classification discussed above, the second class includes the entire category of literary works, but narrows the exemption by reference to attributes of the technological measures that controls access to the works.

In the 2006 rulemaking, the Register determined that a further refinement of the approach to determining a particular class of works was warranted. Even though a class must begin, as its starting point, by reference to one of the categories of authorship enumerated in section 102 of the Copyright Act (or some subset thereof), that class should be further tailored to address the harm (actual or likely) alleged. The proper tailoring of a class will depend on the specific facts, but in some cases, the most appropriate manner of further tailoring the category or sub-category may be to limit the class in relation to particular uses or users.

The impetus for this refinement was a proposed exemption for film and media studies professors. The proponents of the exemption demonstrated that the reproduction and public performance of short portions of motion pictures or other audiovisual works in the course of face-to-face teaching activities of a film or media studies course would generally constitute a noninfringing use. The proponents further demonstrated that the digital version of the motion pictures distributed on DVDs was not merely a preferred format, but that the digital version of these works was the only version of the work that met the pedagogical needs of the film and media studies professors. The proponents of the exemption also demonstrated that their otherwise noninfringing uses of the digital versions of these motion pictures were adversely affected by the prohibition on circumvention of technological measures protecting access to these works, because the Content Scrambling System (CSS) contained on most commercially released DVDs was an access control system that prevented the making of a compilation of film clips for classroom use. Although opponents of the exemption demonstrated a DVD player that was alleged to meet the pedagogical needs of educators, the device presented obstacles for classroom use that were found to be more than a mere inconvenience for a subset of users—film and media studies professors.

The proponents met their burden of proving that section 1201(a)(1) was adversely affecting film and media studies educators' ability to engage in noninfringing uses for the ensuing 3-year period and that no reasonable substitute for the pedagogically beneficial digital content was available or likely to become available in the next three years. The opponents of the proposal expressed concern that if the proposed class of works—audiovisual works included in the educational library of a college or university's film or media studies department and that are protected by technological measures that prevent their educational use—was based only on attributes of the work itself, the exemption would necessarily exempt a much broader range of uses than those in which the film professors wished to engage. Moreover, copyright owners were concerned that such an exemption would create public confusion about the circumstances in which circumvention was appropriate. Given the expanse of such a class of works and the adverse effects that could occur as a result of confusion about the class, copyright owners argued that overall harm of such an exemption would outweigh the marginal benefits to this subset of educators.

[3] Proponents of an exemption may do so in their comments proposing exemptions. Opponents of an exemption should do so in their comments filed in response to the forthcoming Notice of Proposed Rulemaking.

The Register concluded that a further refinement of the scope of a class of works was the proper balance to the valid concerns of both educators and copyright owners. By delineating the class in relation to the relevant noninfringing use proven to be, or likely to be, adversely affected by the prohibition on circumvention, film and media studies educators' needs could be met while leaving the statutory prohibition against circumvention intact for that class with respect to other uses. In the fourth rulemaking concluded in 2010, similar refinements were made to certain classes of works. *See* 37 CFR 201.40(b)(1), (2), (3), and (4).

In all proposed exemptions, the starting point for a class of works must be a section 102 category of authorship, or a subset thereof. That category or subset should then be tailored by other criteria as appropriate under the particular facts presented. The goal is to fashion an exemption that is neither too narrow nor too broad to remedially address the evidence of present and likely harm. An appropriately fashioned exemption will assist users and copyright owners alike, by temporarily suspending the prohibition on circumvention for appropriately tailored adversely affected classes, while preserving the prohibition in all other classes.

The exemptions published for each three-year period are temporary and expire when the succeeding determination of the Librarian of Congress is published. This rulemaking will examine adverse effects existing in the marketplace or likely to exist in the next three-year period to determine whether any exemptions to the prohibition on circumvention of technological protection measures that effectively control access to copyrighted works are warranted by the evidence raised during this rulemaking.

F. Considerations To Address Within a Comment

This notice requests written comments from all interested parties wishing to propose a class of works for exemption from the prohibition on circumvention. In addition to the necessary showing discussed above, in order to make a prima facie case for a proposed exemption, certain critical points should be established. First, a proponent should identify the technological measure that is the ultimate source of the alleged problem, and the proponent should explain how the technological measure effectively controls access to a copyrighted work. Second, a proponent must specifically explain what noninfringing activity the prohibition on circumvention is preventing. In addition to describing the activity, the proponent should provide a factual basis for a determination that the technological measure has had or is likely to have a substantial adverse effect on noninfringing uses; demonstrating only isolated instances of relatively minimal adverse effects is not likely to meet the proponent's burden. Third, a proponent should establish that the prevented activity is, in fact, a noninfringing use under current law. A proponent should also demonstrate why the access-protected copy of a work is needed for the noninfringing use and why alternate means of engaging in the noninfringing uses (including use of available copies of the work in unprotected formats), if they exist, are an insufficient substitute for accomplishing the noninfringing use.

The nature of the Librarian's inquiry is further delineated by the statutory areas to be examined by the Register of Copyrights:

(i) The availability for use of copyrighted works;

(ii) the availability for use of works for nonprofit archival, preservation, and educational purposes;

(iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;

(iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and

(v) such other factors as the Librarian considers appropriate. 17 U.S.C. 1201(a)(1)(C).

These statutory considerations require examination and careful balancing. The harm identified by a proponent of an exemption must be balanced with the harm that would result from an exemption. In some circumstances, the adverse effect of a proposed exemption in light of these considerations may be greater than the harm posed by the prohibition on circumvention of works in the proposed class. Perhaps the proper balance can be resolved by carefully tailoring the scope of the class, but ultimately, the determination of the Librarian must take all of these factors into account.

3. Written Comments

In the first rulemaking, the Register determined that the burden of proof is on the proponent of an exemption to come forward with evidence supporting an exemption for a particular class of works. In this fifth triennial rulemaking, the Register shall continue with the procedure adopted in the second, third and fourth rulemakings: Comments submitted in the initial comment period should be confined to proposals for exempted classes. They should specifically identify particular classes of works adversely affected by the prohibition and provide evidentiary support for the need for the proposed exemptions (*see* section F above).

Proponents should present their *entire* case in their initial comments. A proponent of a particular class of works will not be permitted to submit an additional comment in support of that class in response to the December notice of proposed rulemaking unless, at least 15 days before the deadline for comments in response to the notice of proposed rulemaking, the proponent has submitted a written request for permission to submit an additional comment demonstrating good cause to permit the submission of the comment, and the Copyright Office has approved the submission of the comment. The purpose of this requirement is to provide for the orderly presentation of evidence and arguments, and to permit both proponents and opponents to present their best cases.

For each particular class of works that a commenter proposes for exemption, the commenter should first identify that class, followed by a summary of the argument in favor of exempting that proposed class. The commenter should then specify the facts and evidence providing a basis for this exemption. This factual information should ideally include the technological measure that controls access and the manner in which this technological measure operates to control access to a copyrighted work. Finally, the commenter should state any legal arguments in support of the exemption, including the activity that is claimed to be noninfringing, the legal basis for this claim, and why this noninfringing activity cannot be accomplished in other ways. The legal argument should include an analysis of the factors set forth in 17 U.S.C. 1201(a)(1)(C), discussed above. This format of class/summary/facts/argument should be sequentially followed for each class of work proposed as necessary.

As discussed above, the best evidence in support of an exemption would consist of concrete examples or specific instances in which the prohibition on circumvention of technological measures protecting access has had or is likely to have an adverse effect on noninfringing uses. It would also be useful for the commenter to quantify the adverse effects in order to explain the scope of the present or likely problem. As noted above, demonstrating only

isolated instances of relatively minimal adverse effects is not likely to meet the proponent's burden.

Comments subsequently submitted in response to exemptions proposed in the first round of comments should provide factual information and legal argument addressing whether or not a proposed exemption should be adopted. Since the comments in this second round are intended to be responsive to the initial comments, commenters must identify which proposal(s) they are responding to, whether in opposition, support, amplification or correction. As with initial comments, these responsive comments should first identify the proposed class or classes to which the comment is responsive, provide a summary of the argument, and then provide the factual and/or legal support for their argument. This format of class/summary/facts and/or legal argument should be repeated for each comment responsive to a particular proposed class of work.

All comments must, at a minimum, contain the legal name of the submitter and the entity, if any, on whose behalf the comment was submitted. If persons do not wish to have their address, telephone number, or email address publicly displayed on the Office's website, comments should not include such information on the document itself but should only include the legal name of the commenter. The Office strongly prefers that all comments be submitted in electronic form and the electronic form will provide a place to provide the required information separately from the attached comment submission. However, anyone who cannot submit comments electronically may contact the Copyright Office at 202–707–8380 for special instructions. Electronic comments successfully submitted through the Office's website will generate a confirmation receipt to the submitter.

4. Submission of Comments

The Copyright Office's Web site will contain a submission page at: *http://www.copyright.gov/1201/comment-forms.* Approximately thirty days prior to the deadline for submission of comments, the form page will be activated on the Copyright Office Web site allowing information to be entered into the required fields, including the name of the person making the submission, mailing address, telephone number, and email address. There will also be non-required fields for, *e.g.,* the commenter's title, the organization that the commenter is representing, whether the commenter is likely to request to testify at public hearings and if so, whether the commenter is likely to prefer to testify in Washington, DC, or at a location in California. Commenters will also be required to fill in two additional fields: (1) The proposed class or classes of copyrighted work(s) to be exempted, and (2) a brief summary of the argument(s).

All comments submitted electronically must be sent as an attachment, and must be in a single file in either Adobe Portable Document File (PDF) format (preferred), Microsoft, WordPerfect, Rich Text Format (RTF), or ASCII text file format. There will be a browse button on the form that will allow submitters to attach the comment file to the form and then to submit the completed form to the Office.

The personal information entered into the required fields on the form page will not be publicly posted on the Copyright Office website, but the Office intends to post on its website the name of the proponent, the proposed class and possibly the summary of the argument, as well as the entire, attached comment document. Only the commenter's name is required on the comment document itself and a commenter who does not want other personal information posted on the Office's Web site should avoid including other personal information on the comment itself. Except in exceptional circumstances, changes to the submitted comment will not be allowed and it will become a part of the permanent public record of this rulemaking.

Comments will be accepted for a period of 30 days, and a form will be placed on the Copyright Office Web site 30 days prior to the deadline for submission. Initial comments will be accepted from November 2, 2011, until December 1, 2011, at 5 p.m. Eastern Standard Time, at which time the submission form will be removed from the website. The deadline for the second round of comments will be announced in the Notice of Proposed Rulemaking to be published in December, and will probably be early in February 2012.

5. Hearings

As mentioned above, after the conclusion of the comment periods, the Register intends to hold public hearings in the Spring. The dates and locations of the hearings in, have not yet been determined, although at a minimum hearings will be conducted in Washington DC and, possibly, in California. A separate notice providing details about all hearings in this rulemaking proceeding will be published at a later time in the **Federal Register** and on the Copyright Office's website. In order to assist the Copyright Office in identifying the number of days for hearings, the comment form page will contain non-required fields asking whether the commenter is likely to request to testify and if so, in which location. Formal requests to testify will be solicited early in 2012.

As noted above, following the hearings, the Copyright Office may request additional information from parties who have been involved in the rulemaking process. Such requests for responses to questions will take the form of a letter from the Copyright Office and will be addressed to particular parties involved in an issue in which more information is sought. These inquiries will include deadlines based on when the requests for information are sent. After the receipt of all responses to all inquiries from the Copyright Office, the Office will post the questions, the parties to whom the questions were sent, and the responses on the Copyright Office's website.

6. Process for Untimely Submissions Based on Exceptional or Unforeseen Circumstances

To provide sufficient flexibility in this proceeding in the event that unforeseen developments occur after the deadlines for the filing of initial comments, a person wishing to propose an exemption for a particular class of works after the specified deadline for initial comments may petition the Register to consider an additional exemption. A petition, including proposed new classes of works to be exempted, must be in writing and must set forth the reasons why the information could not have been made available earlier and why it should be considered by the Register after the deadline. A petition must also be accompanied by a comment that meets the requirements for initial comments set forth in section 3 above. Any person wishing to submit a petition should contact the Copyright Office at 202–707–8380 for further information on how to submit the petition. Such petitions will be granted only when the Office has been satisfied that late submission is justified due to exceptional or unforeseen circumstances. Exceptional or unforeseen circumstances generally require that the proposal be based upon information that did not exist at the time of the comment periods. A person wishing to file any other untimely submission (e.g., a comment in response to a proposed class of works) may also petition the Register to consider such submission, but such untimely submissions will be disfavored. The Register will make a determination

whether to accept a petition based on the stage of the rulemaking process at which the request is made and the merits of the petition. A substantively meritorious petition may be denied if the petition comes so late in the process that adequate notice and comment cannot be accommodated within the statutory time frame of the rulemaking process. The mere fact that an interested party was unaware of this proceeding or of any particular exemptions proposed in this proceeding is not a valid justification for a late submission. If a petition is accepted, the Register will publish the proposal in the **Federal Register** and announce deadlines for comments. If a petition is denied, the Register will set forth the reasons for the denial in a letter to the petitioner. All petitions and responses will become part of the public record in this rulemaking process.

Dated: September 23, 2011.

Maria A. Pallante,

Register of Copyrights.

[FR Doc. 2011–25106 Filed 9–28–11; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0561; FRL–9469–2]

Revisions to the California State Implementation Plan, Santa Barbara Air Pollution Control District, Sacramento Municipal Air Quality Management District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Santa Barbara Air Pollution Control District (SBAPCD), Sacramento Municipal Air Quality Management District (SMAQMD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from solvent cleaning machines and solvent cleaning operations and oil and gas production wells. 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 October 31, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0561, by one of the following methods:

1. *Federal eRulemaking Portal: 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: SBAPCD Rule 321, ''Solvent Cleaning Machines and Solvent Cleaning'', SMAQMD Rule 466, ''Solvent Cleaning'', SCAMQD Rule 1171, ''Solvent Cleaning Operations'' and SCAMQD Rule 1148.1, ''Oil and Gas Production Wells.'' 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: September 7, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–24689 Filed 9–28–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 160

[Docket No. USCG–2011–0076]

RIN 1625–AB60

Inflatable Personal Flotation Devices

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: On March 30, 2011, the Coast Guard published a direct final rule that notified the public of the Coast Guard's intent to harmonize structural and performance standards for inflatable recreational personal flotation devices (PFDs) with current voluntary industry consensus standards, and to slightly modify regulatory text in anticipation of a future rulemaking addressing the population for which inflatable recreational PFDs are approved (76 FR 17561). As discussed below, we have received an adverse comment on the direct final rule, and have withdrawn the direct final rule in a notice of withdrawal published separately in this issue of the **Federal Register**. The Coast Guard seeks comment on the issues raised by the commenters and proposes to make the same changes to the current regulatory text, as modified below.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before November 28, 2011 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0076 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.

Viewing incorporation by reference material: You may inspect the material proposed for incorporation by reference at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 9 a.m. and 3 p.m. Monday through Friday, except Federal holidays. The telephone number is 202–372–1394. Copies of the material are available as indicated in the ''Incorporation by Reference'' section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Ms. Brandi Baldwin, Lifesaving and Fire Safety Division (CG–5214), U.S. Coast Guard, telephone 202–372–1394, e-mail *Brandi.A.Baldwin@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:

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I. 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.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0076), 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 or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone 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* and insert ''USCG–2011–0076'' in the ''Keyword'' box. 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 this proposed rule based on your comments.

B. 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–2011–0076'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. 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).

D. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, 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**.

II. Abbreviations

ANSI American National Standards Institute
CFR Code of Federal Regulations
DHS Department of Homeland Security
NEPA National Environmental Policy Act of 1969
NPRM Notice of proposed rulemaking
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PFDs Personal Flotation Devices
STP Standards Technical Panel
UL Underwriters Laboratories
USCG United States Coast Guard

III. Regulatory History

On March 30, 2011, we published a direct final rule entitled ''Inflatable Personal Flotation Devices'' in the **Federal Register** (76 FR 17561). The Coast Guard received three submissions in response to the direct final rule: One supportive of the rulemaking generally, one which raised questions about a revision to one of the standards incorporated by reference, and one adverse comment related to the deletion of the words ''approved for use by

adults only'' from the regulations. Because we received an adverse comment, the Coast Guard is withdrawing the direct final rule in a notice of withdrawal published separately in this issue of the **Federal Register**, and issuing this notice of proposed rulemaking (NPRM) instead.

This NPRM proposes the same content as the direct final rule with one change to update a version of an industry standard proposed for incorporation by reference. The comments received in response to the direct final rule are discussed below under ''Discussion of the Proposed Rule.''

IV. Background

The Coast Guard is charged with establishing minimum safety standards, and procedures and tests required to measure conformance with those standards, for recreational vessels and associated equipment. *See* 46 U.S.C. 4302, and Homeland Security Delegation #0170.1, section II, paragraph (92)(b). Under this authority, in 1995 the Coast Guard promulgated regulations establishing structural and performance standards for inflatable recreational PFDs and procedures and tests necessary for Coast Guard approval of such PFDs meeting the standards. *See* 46 CFR part 160, subpart 160.076 (Inflatable Recreational Personal Floatation Devices); 60 FR 32835 (June 23, 1995). Subpart 160.076 incorporates by reference three Underwriters Laboratories (UL) Standards 1180, ''Fully Inflatable Personal Flotation Devices'' (First Edition); 1191, ''Components for Personal Flotation Devices'' (Second Edition); and 1123, ''Marine Buoyant Devices'' (Fifth Edition).

The editions of these UL Standards currently incorporated by reference into subpart 160.076 were current when the Coast Guard promulgated subpart 160.076 in 1995. However, UL has since published newer editions of these Standards that the Coast Guard considers to contain technological and safety developments since 1995 that are important to codify in subpart 160.076. In this proposed rule, the Coast Guard proposes to update the editions of the UL Standards incorporated by reference in subpart 160.076.

The editions of these UL Standards currently incorporated by reference in subpart 160.076, as well the editions that will replace the currently incorporated versions, limit the use of inflatable PFDs to persons at least 16 years of age and weighing more than 80 pounds. Therefore, the Coast Guard only approves inflatable PFDs with these age and weight limitations. When the Coast Guard promulgated subpart 160.076, inflatable PFD-technology was relatively new and the appropriateness of these devices for children had not yet been explored. At that time, the Coast Guard stated, ''The Coast Guard agrees with those comments that suggested that approval of inflatable PFDs for children is not appropriate at this time. * * * The issue of inflatable PFDs for children can be revisited after more experience is gained with the approval of inflatable PFDs for adults.'' 60 FR 32839, 32841. As such, subpart 160.076 currently limits Coast Guard-approved inflatable PFDs to ''use by adults only.'' 46 CFR 160.076–1(b)(2).

Although the Coast Guard is not yet ready to revisit the issue of inflatable PFDs for children, the industry has begun considering the experience it has gained from adults' usage of inflatable PFDs during the past 15 years, as well as advances in inflatable PFD technology, to explore the appropriateness of these devices for children and create an appropriate standard.

In 2009, a member of the PFD industry submitted a proposal to the UL Standards Technical Panel (STP) proposing new standards for inflatable PFDs designed for children. The Coast Guard understands that the UL Standards development effort continues to move forward, and there may be other standards addressing inflatable PFDs for children in development. Inflatable PFDs constructed and tested to any new standard adopted by a consensus body, however, would not be eligible for Coast Guard approval until that standard is incorporated by reference into Coast Guard regulations after consideration of the appropriateness of incorporating such a new standard during a rulemaking that includes an opportunity for public comment. The Coast Guard plans to initiate such a rulemaking in the future and is using this rulemaking to prepare for such a rulemaking as discussed below.

This rulemaking does not constitute approval of the use of inflatable PFDs for users under 16 years of age or a proposal for such approval. The newer editions of the UL Standards proposed to be incorporated by reference in this rule retain requirements for inflatable PFDs for adult wearers only. While there are still outstanding concerns relative to the considerations for designing an inflatable PFD intended for use by wearers under the age of 16, the Coast Guard recognizes that these matters are being addressed by UL's STP through the American National Standards Institute (ANSI)-accredited standards development process. The Coast Guard actively participates in the STP and continues to work cooperatively with the PFD industry to develop appropriate design, testing, and marking requirements for inflatable PFDs for use by children. This rule would facilitate and encourage the continuation of this process, but is not intended to resolve any technical issues.

V. Discussion of the Proposed Rule

The Coast Guard proposes to revise 46 CFR part 160, subpart 160.076 to update the editions of the UL Standards incorporated by reference and to make necessary conforming changes resulting from incorporating the updated standards. The conforming changes would include removing test methods, acceptance criteria, and other standards currently contained in subpart 160.076 that are made redundant by the newer editions of the UL Standards. The Coast Guard also proposes to make minor regulatory text revisions to subpart 160.076 that have a non-substantive effect.

In response to the direct final rule, which included the same content as proposed below, one commenter expressed support, citing the removal of barriers to the development of innovative PFDs as leading to an expected improvement in the quality and variety of inflatable lifejackets available to the public. The Coast Guard appreciates the support and seeks public comment on the proposed rule.

A. Incorporations by Reference

The proposal to update the standards incorporated by reference in 46 CFR 160.076–11 is intended to harmonize the requirements for Coast Guard approval of recreational inflatable PFDs with voluntary industry consensus standards.

The updated UL Standards proposed for incorporate by reference are as follows:

- UL 1180, ''UL Standard for Safety for Fully Inflatable Recreational Personal Flotation Devices,'' is updated from the May 1995 version (First Edition) to the February 2009 version (Second Edition);
- UL 1191, ''UL Standard for Safety for Components for Personal Flotation Devices'' is updated from the May 1995 version (Second Edition) to the August 2011 version (Fourth Edition); and
- UL 1123, ''UL Standard for Safety for Marine Buoyant Devices,'' is updated from the February 1995 version (Fifth Edition) to the October 2008 version (Seventh Edition).

These updated versions of the UL Standards include revisions that have

been evaluated and adopted by UL's STP, the ANSI-accredited Standards Development Organization for these standards, and reflect the industry-wide consensus standard for design, manufacturing, and testing of inflatable PFDs and PFD components. As discussed above in the ''Background'' section, the Coast Guard participated fully in the development of these standards through its representation on the STP.

1. UL 1180

UL 1180, ''UL Standard for Safety for Fully Inflatable Recreational Personal Flotation Devices,'' contains the design, construction, testing, and performance requirements for fully inflatable recreational PFDs for users over 16 years of age and weighing at least 80 pounds. Significant revisions in the Second Edition of UL 1180 from the First Edition include a revision to the temperature cycling test and the addition of testing requirements for an optional buddy line. The revision to the temperature cycle narrows the range of temperature extremes to harmonize with international test methods in the International Organization for Standardization's ISO 12402–9 ''Personal flotation devices—Part 9: Test methods.'' The additional testing requirements for an optional buddy line provides the test procedures and acceptance criteria for an inflatable PFD equipped with a buddy line. This addition only impacts manufacturers who choose to equip inflatable PFDs with the optional buddy line.

In a response to industry seeking approval for inflatable PFD designs not covered by UL 1180 First Edition, the Second Edition also includes four new supplements containing requirements for user-assisted inflatable PFDs, user-convertible manual/automatic inflatable PFDs, manual inflators without cylinder seal indication, and inflatable work vests. The supplements address design innovations that manufacturers developed after publication of the First Edition.

By incorporating by reference UL 1180 Second Edition with these four new supplements, user-assisted inflatable PFDs, user-convertible manual/automatic inflatable PFDs, manual inflators without cylinder seal indication, and inflatable work vests would be able to be approved under proposed 46 CFR part 160, subpart 160.076 setting forth design and performance standards for these types of inflatable PFDs. Currently, in order to review these design innovations for Coast Guard approval, the Coast Guard has been evaluating each submitted design innovation in accordance with 46 CFR 160.076–16(g)(2) for an equivalent measure of safety to the specific standards in subpart 160.076. Section 160.076–13(g)(2) provides for Coast Guard approval of an inflatable PFD that does not meet the specific standards in subpart 160.076 if the PFD ''provides at least the same degree of safety provided by other PFDs that meet the requirements of this subpart.'' *See also* 46 CFR 159.005–7(e) (providing for similar ''equivalent'' approval, not specific to PFDs, for lifesaving equipment that ''has equivalent performance characteristics'' and ''is at least as effective as [equipment] that meets the requirements [in relevant Coast Guard regulations]''). The Coast Guard has been evaluating and approving user-assisted inflatable PFDs, user-convertible manual/automatic inflatable PFDs, manual inflators without cylinder seal indication, and inflatable work vests under 46 CFR 160.076–13(g)(2) because the Coast Guard has determined that they provide at least the same degree of safety that is provided by inflatable PFDs meeting the standards in subpart 160.076. This rulemaking would make this extra evaluation under 46 CFR 160.076–13(g)(2) unnecessary for user-assisted inflatable PFDs, user-convertible manual/automatic inflatable PFDs, manual inflators without cylinder seal indication, and inflatable work vests; these types of PFDs would be reviewed for compliance with the specific standards set forth in the proposed subpart 160.076.

UL 1180 Second Edition also includes the option for the laboratory conducting required performance tests to use youth subjects who fit the necessary size requirements (e.g., weight and chest circumference) in the testing of adult-sized PFDs, where appropriately sized adult subjects are not available. This new option, however, would not affect the Coast Guard approval of inflatable PFDs for use by adults only. Use of youth subjects is limited to performance testing only.

UL 1180 Second Edition also includes editorial changes to correct typos and erroneous internal references. These editorial changes clarify the requirements for the body, primary closure, collar, shoulder, and secondary closure strength tests; revise the format of the labels required by 46 CFR 160.076–39, but do not change the required information; add a definition of ''white-water paddling''; move component and material tests from UL 1180 to UL 1191; and renumber the paragraphs in UL 1180. These changes would have no substantive effect on Coast Guard approval of inflatable PFDs.

2. UL 1191

UL 1191, ''UL Standard for Safety for Components for Personal Flotation Devices,'' contains the construction, testing, and performance requirements for the materials and components used in the construction of PFDs generally. Several revisions in the Fourth Edition of UL 1191 from the Second Edition are not relevant to this rulemaking because the revisions address only inherently buoyant and hybrid PFDs, not inflatable PFDs. This rulemaking only addresses inflatable PFDs, and incorporating by reference the Fourth Edition into 46 CFR part 160, subpart1 160.076 only incorporates the portions of UL 1191 pertaining to inflatable PFDs.

In the direct final rule, the Coast Guard intended to incorporate the December 2008 version of the Fourth Edition of UL 1911 (including changes through February 27, 2009). One commenter expressed disagreement with a specific revision made to that version of UL 1191, which increased the tolerance for the minimum gross weight of inflation gas cylinders from 10% to 15%. Following publication of the direct final rule, UL 1191 was revised in August 2011 to return this value to 10%. No other changes were made in the August 2011 revision. The Coast Guard proposes to incorporate the most current version of the Fourth Edition of UL 1991, which includes changes through August 2011, and which contains the revision to the tolerance on the minimum gross weight of inflation gas cylinders.

The other most notable substantive changes in UL 1191 Fourth Edition specific to inflatable PFDs are the addition of testing and performance standards for automatic and convertible manual/automatic inflation systems. When the Coast Guard first promulgated 46 CFR part 160, subpart 160.076 in 1995, the only design for an inflatable PFD involved manual activation of the inflation mechanism. Since then, automatic and convertible manual/automatic inflation systems have been developed, and nearly half of the inflatable PFD designs available in the U.S. market utilize automatic inflation. The addition of testing and performance standards for automatic and convertible manual/automatic inflation systems covers the innovative designs created by manufacturers since the Second Edition. As discussed above, the Coast Guard has been approving inflatable PFDs using automatic or convertible manual/automatic inflation systems under 46 CFR 160.076–13(g)(2) because they

provide at least the same degree of safety provided by inflatable PFDs meeting the standards in 46 CFR part 160, subpart 160.076. By incorporating UL 1191 Fourth Edition, inflatable PFDs using automatic or convertible manual/automatic inflation systems would be approved under the specific standards set forth in proposed subpart 160.076, rather than as equivalent safety devices.

UL 1191 Fourth Edition includes minor substantive changes from the Second Edition that provide greater flexibility to manufacturers in performing required tests or clarify existing requirements. The Fourth Edition eliminates the perchloroethylene exposures during the Operability/Discharge Test because this test was determined not to be representative of the user environment of an inflatable PFD and therefore inapplicable as a safety test. The Fourth Edition also adds Xenon exposure as an optional accelerated weathering method to provide manufacturers another option to choose from for the required weathering tests. The Fourth Edition includes, for the first time, specifications for the water hardness and liquid detergent used for conditioning PFD components and materials to clarify certain test requirements and ensure repeatable test results. The Fourth Edition adds clarifying language to the test procedure for evaluating torsional stiffness of tie tapes.

The Fourth Edition also includes one substantive change to incorporate directly in UL 1191 a portion of the requirements currently contained in subpart 160.076. The Fourth Edition contains the additional marking requirements for inflation systems currently required by 46 CFR 160.067–39(e). Because the Fourth Edition includes the additional marking requirements, these requirements would be deleted from the regulatory text in section 160.067–39(e), as discussed below in the ''Conforming Changes'' section.

The Fourth Edition also includes editorial changes to correct typos and references to clarify the inflation system discharge test procedure and the maximum crack pressure for the operability test.

3. UL 1123

UL 1123, ''UL Standard for Safety for Marine Buoyant Devices,'' contains the design, construction, testing, and performance requirements for inherently buoyant recreational PFDs. The Coast Guard uses this standard in 46 CFR part 160, subpart 160.076 only to define the format and content of the informational pamphlet required by 46 CFR 160.076–35. The only revision in UL 1123 Seventh Edition relevant to inflatable PFDs is the removal of the statement in the standard erroneously indicating a sole publisher of the pamphlet. As such, this revision would have no impact on Coast Guard approval of inflatable PFDs.

B. Conforming Changes

Because of the aforementioned proposed updates to the UL Standards incorporated by reference, the Coast Guard proposes to make several conforming changes to the regulatory text to account for the revisions in the newer editions of the UL Standards.

The Coast Guard proposes to remove regulatory text that addresses requirements for inflatable PFDs that are contained in the UL 1180 Second Edition or UL 1191 Fourth Edition. Specifically, the Coast Guard proposes to delete from 46 CFR 160.076–21(b)–(c) and 160.076–25(d)(2)(i)–(iv) the requirements and acceptance criteria for the grab breaking strength, tear strength, seam strength, and permeability tests for inflation chamber materials, which are included in the UL 1191 Fourth Edition. The Coast Guard also proposes to delete the repacking and rearming test from 45 CFR 160.076–25(c) and the requirements for marking inflation mechanisms from 46 CFR 160.076–21(d) and 160.076–39(e) because these provisions are included in the UL 1180 Second Edition. The deletion of this regulatory text would have no substantive effect on the requirements for Coast Guard approval of recreational inflatable PFDs, because the requirements are retained in the updated UL Standards incorporated by reference in revised 46 CFR 160.076–11. Because incorporating a standard by reference is treated as if the requirements of the standards are published in the CFR, retaining this regulatory text would be redundant.

The Coast Guard also proposes to remove standards currently incorporated by reference in subpart 160.076 that would apply through the newer edition of UL 1191. Because these standards would still apply to inflatable PFDs through the UL 1191 Fourth Edition incorporated by reference in subpart 160.076, it would be redundant to retain the standards in subpart 160.076 text. Specifically, the Coast Guard proposes to remove Federal Test Method Standard No. 191A (Federal Standard for Textile Test Methods), American Society for Testing and Materials' ASTM D 751–95 (Standard Test Methods for Coated Fabrics), and ASTM D 1434–82 (Standard Test Method for Determining Gas Permeability Characteristics of Plastic Film and Sheeting), because those standards, or equivalent test methods, are referenced in UL 1191 Fourth Edition.

Finally, for the updated standards, the Coast Guard proposes editorial changes throughout the subpart to resolve references to deleted paragraphs, to update or remove cross-references to specific sections of the UL Standards, and to conform the formatting of incorporated references to current **Federal Register** requirements.

C. Regulatory Text Revisions

To prepare for a future rulemaking addressing inflatable PFDs for use by children, the Coast Guard proposes to remove from § 160.076–1 (Scope) the words ''approved for use by adults only.'' This removal, however, would have no substantive effect on Coast Guard approval of inflatable PFDs because the editions of the UL Standards that would replace the editions currently incorporated by reference in subpart 160.076 still limit the use of inflatable PFDs to persons who are at least 16 years of age and weigh more than 80 pounds. Removing these words would prepare subpart 160.076 for a future rulemaking because, if the Coast Guard decides as part of that future rulemaking to extend the use of inflatable PFDs to children, the Coast Guard anticipates it will do so by again updating the standards incorporated by reference, which would be the only place in subpart 160.076 that contains age and weight limitations after the effective date of this proposed rulemaking.

In response to the direct final rule, one commenter expressed concern that deleting the words ''approved for use by adults only'' would create a perception that inflatable PFDs for youth would be available on the date the rule went into effect, would facilitate teens using existing inflatable PFDs, and would enable marketing of existing inflatable PFDs to youth. The commenter also expressed concern that this rulemaking is premature in light of work that still needs to be done to evaluate sizing requirements for infant or child PFDs. The Coast Guard seeks comment on this issue.

The Coast Guard also proposes revising § 160.076–19 (Recognized laboratories) to replace the reference to Underwriters Laboratories (UL) as the sole recognized laboratory for testing of inflatable PFDs and PFD components with a reference to the Coast Guard's Marine Information Exchange (CGMIX) Web site, where all Coast Guard-

recognized laboratories are listed. When subpart 160.076 was initially published in 1995, UL was, and currently continues to be, the only laboratory recognized by the Coast Guard for approval testing and production oversight of Coast Guard-approved inflatable PFDs under this subpart. However, additional laboratories may be recognized by the Coast Guard to perform these functions. In order to maintain a listing of recognized laboratories outside of the regulatory text consistent with such listings and information for other types of lifesaving equipment, the Coast Guard proposes to replace the list in subpart 160.076 with the reference to where to find the list on the CGMIX.

VI. Incorporation by Reference

Material proposed for incorporation by reference appears in proposed 46 CFR 160.076–11. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in paragraph (b) of § 160.076–11.

Before publishing a binding rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

VII. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the 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 NPRM has not been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget. A draft regulatory assessment follows:

The Coast Guard does not expect this rulemaking to result in additional costs to industry, as manufacturers of Coast Guard-approved inflatable PFDs already follow the editions of the UL Standards being incorporated by reference into 46 CFR part 160, subpart 160.076 by this rulemaking. The Coast Guard requires approval tests to be performed by an independent laboratory recognized by the Coast Guard under 46 CFR part 159, subpart 159.010. Currently, UL is the only recognized independent laboratory for inflatable PFDs, and UL requires manufacturers to conform to its most current standards, which are the editions being incorporated by reference into subpart 160.076. Additionally, UL offers a certification for recreational inflatable PFDs that conform to UL's most current standards. The UL certification provides a product liability benefit to manufacturers, and obtaining the UL certification has become an industry custom for manufacturers of commercially-sold recreational inflatable PFDs.

As described above, industry is currently following the editions of the UL Standards incorporated by reference into subpart 160.076 in this rulemaking, and PFD manufacturers will adhere to these standards regardless of whether this rule is promulgated. Therefore, this modification to 46 CFR part 160, subpart 160.076 is not expected to impose a burden on industry.

In addition, the Coast Guard does not expect removing the language ''approved for use by adults only'' in 46 CFR 160.076–1 to have a substantive impact because the Coast Guard will continue approving recreational inflatable PFDs with the current age and weight limitations. As discussed above in the ''Discussion of the Rule'' section, the age and weight limitations are found in current editions of the UL Standards incorporated in subpart 160.076 and are retained in the newer editions of the UL Standards proposed to be incorporated by reference into subpart 160.076 in this rulemaking. The remaining changes to subpart 160.076 are minor editorial updates. Please see the ''Discussion of the Rule'' section above for additional details.

The primary benefit of this rulemaking would be the increase in regulatory efficiencies in the maritime community by harmonizing Coast Guard regulations in 46 CFR part 160, subpart 160.076 with current voluntary industry consensus standards. This rulemaking would result in greater consistency between Coast Guard regulations and consensus standards and would reduce burdens on manufacturers who currently have to maintain multiple editions of the UL Standards to comply with Coast Guard regulations, to use UL as an independent laboratory to perform required tests, and to obtain the UL certification. This rulemaking would also result in better compliance with the National Technology Transfer and Advancement Act (NTTAA), which directs agencies to use voluntary consensus standards in their regulatory activities.

Because the rulemaking would harmonize subpart 160.076 with existing UL Standards, any ambiguity associated with inflatable PFD standards would be reduced. Harmonization of these standards is important to fulfill the Coast Guard's mission of establishing minimum safety standards, and procedures and tests required to measure conformance with those standards, for recreational vessels and associated equipment.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rulemaking 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 fewer than 50,000 people.

The Coast Guard expects that this rule would not have an impact on small entities. As described in the ''Regulatory Planning and Review'' section, we do not expect this rule would result in additional costs to industry. However, this rule would improve efficiency by providing consistency between Coast Guard regulations and UL Standards. Therefore, the Coast Guard certifies that under 5 U.S.C. 605(b), this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

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 to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think your business or organization qualifies, as well as how and to what degree this rule will economically affect it.

C. 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.

D. 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).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if the rule 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.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

This rule meets the 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.

I. Protection of Children

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

J. Indian Tribal Governments

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

K. 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.

L. 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 uses the following voluntary consensus standards: UL 1123, ''UL Standard for Safety for Marine Buoyant Devices''; UL 1180, ''UL Standard for Safety for Fully Inflatable Recreational Personal Flotation Devices''; and UL 1191, ''UL Standard for Safety for Components for Personal Flotation Devices.''

M. Coast Guard Authorization Act Sec. 608 (46 U.S.C. 2118(a))

Section 608 of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281) adds new section 2118 to 46 U.S.C. Subtitle II (Vessels and Seamen), Chapter 21 (General). New section 2118(a) sets forth requirements for standards established for approved equipment required on vessels subject to 46 U.S.C. Subtitle II (Vessels and Seamen), Part B (Inspection and Regulation of Vessels). Those standards must be ''(1) based on performance using the best available technology that is economically achievable; and (2) operationally practical.'' *See* 46 U.S.C. 2118(a). This rulemaking addresses inflatable recreational PFDs for Coast Guard approval that are required on vessels subject to 46 U.S.C. Subtitle II, Part B, and the Coast Guard has ensured this rule satisfies the requirements of 46 U.S.C. 2118(a), as necessary.

N. 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 made a preliminary determination that this action is one of a category of actions that does 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 the ''Public Participation and Request for Comments'' section of this preamble. This rule involves personal flotation device standards and falls under regulations concerning safety equipment described in section 6(a) of the ''Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy'' (67 FR 48244, July 23, 2002). 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 46 CFR Part 160

Marine safety, Incorporation by reference, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 160 as follows:

PART 160—LIFESAVING EQUIPMENT

1. The authority citation for part 160 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703 and 4302; E.O. 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; and Department of Homeland Security Delegation No. 0170.1.

2. Revise § 160.076–1 to read as follows:

§ 160.076–1 Scope.

* * * * *

(b) Inflatable PFDs approved under this subpart rely entirely upon inflation for buoyancy.

§ 160.076–7 [Amended]

3. Amend § 160.076–7(b) by adding the words ''(incorporated by reference, see 160.076–11)'' after the words ''UL 1180''.

§ 160.076–9 [Amended]

4. Amend § 160.076–9(b) by adding the words ''(incorporated by reference, see 160.076–11)'' after the words ''UL 1180''.

5. Amend § 160.076–11 as follows:

a. In paragraph (a), remove the first occurrence of the words ''paragraph (b) of'', which appears after the words ''one listed in''.

b. Revise paragraph (b) to read as follows:

§ 160.076–11 Incorporation by reference.

* * * * *

(b) Underwriters Laboratories (UL) *Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062–2096 (Phone (847) 272–8800; Facsimile: (847) 272–8129).*

(1) UL Standard for Safety for Marine Buoyant Devices, UL 1123, Seventh Edition including revisions through February 14, 2011, October 1, 2008, (''UL 1123''), incorporation by reference approved for § 160.076–35.

(2) UL Standard for Safety for Fully Inflatable Recreational Personal Flotation Devices, UL 1180, Second Edition including revisions through December 3, 2010, February 13, 2009, (''UL 1180''), incorporation by reference approved for §§ 160.076–7; 160–076–9; 160.076–21; 160.076–23; 160.076–25; 160.076–31; 160.076–37; and 160.076–39.

(3) UL Standard for Safety for Components for Personal Flotation Devices, UL1191, Fourth Edition including revisions through August 24, 2011, December 12, 2008, (''UL 1191''), incorporation by reference approved for §§ 160.076–21; 160.076–25; 160.076–29; and 160.076–31.

6. Revise § 160.076–19 to read as follows:

§ 160.076–19 Recognized laboratories.

The approval and production oversight functions that this subpart requires to be conducted by a recognized laboratory must be conducted by an independent laboratory recognized by the Coast Guard under subpart 159.010 of part 159 of this chapter to perform such functions. A list of recognized independent laboratories is available from the Commandant and online at *http://cgmix.uscg.mil.*

7. Revise § 160.076–21 to read as follows:

§ 160.076–21 Component materials.

Each component material used in the manufacture of an inflatable PFD must—

(a) Meet the applicable requirements of subpart 164.019 of this chapter, UL 1191 and UL 1180 (incorporated by reference, see § 160.076–11), and this section; and

(b) Be of good quality and suitable for the purpose intended.

§ 160.076–23 [Amended]

8. Amend § 160.076–23 by adding the words ''(incorporated by reference, see § 160.076–11)'' after the words ''UL 1180''.

9. Amend § 160.076–25 as follows:

a. In paragraph (a), after the words ''UL 1180'', add the words ''(incorporated by reference, see § 160.076–11)'';

b. Remove and reserve paragraph (c); and

c. Revise paragraph (d) to read as follows.

§ 160.076–25 Approval Testing.

* * * * *

(d) Each PFD design must be visually examined for compliance with the construction and performance requirements of §§ 160.076–21 and 160.076–23 and UL 1180 and UL 1191 (incorporated by reference, see § 160.076–11).

* * * * *

10. Amend § 160.076–29 as follows:

a. In paragraph (d), remove the words ''in accordance with UL 1180''; and

b. Revise paragraph (e)(4)(i) to read as follows:

§ 160.076–29 Production oversight.

* * * * *

(e) * * *

(4) * * *

(i) Samples must be selected from each lot of incoming material. Unless otherwise specified, Table 29.1 of UL 1191 (incorporated by reference, see § 160.076–11) prescribes the number of samples to select.

* * * * *

§ 160.076–31 [Amended]

11. Amend § 160.076–31 as follows:

a. In paragraph (c)(1), remove the words ''The average and individual results of testing the minimum number of samples prescribed by § 160.076–25(d)(2)'' and add, in their place, the words ''The materials in each inflatable chamber''; and remove the words ''§ 160.076–21(b) and (c)'' and add, in their place, the words ''Table 29.1 of UL 1191 (incorporated by reference, see § 160.076–11)'';

b. In paragraph (c)(2), remove the words ''§ 160.076–21(d)(2)(iv). The results for each inflation chamber must be at least 90% of the results obtained in approval testing'' and add, in their place, the words ''Table 29.1 of UL 1191.'';

c. In paragraph (c)(3), after the words ''UL 1180'', add the words ''(incorporated by reference, see § 160.076–11)'', and remove the number ''7.15'', and add, in its place, the number ''41'';

d. In paragraph (c)(4), after the words ''UL 1180'', remove the number ''7.16'', and add, in its place, the number ''42'';

e. In paragraph (c)(5), after the words ''UL 1180'', remove the words ''7.2.2, 7.2.10, except 7.2.5'' and add, in their place, the number ''29''; and

f. In paragraph (c)(6), after the words ''UL 1180'', remove the words ''7.4.1 and .2'' and add, in their place, the number ''31''.

§ 160.076–35 [Amended]

12. Amend § 160.076–35 by adding the words ''(incorporated by reference, see § 160.076–11)'' after the words ''UL 1123''.

§ 160.076–37 [Amended]

13. Amend § 160.076–37(b) by removing the words ''section 11 of'' after the words ''specified in'' and by adding the words ''(incorporated by reference, see § 160.076–11)'' after the words ''UL 1180''.

§ 160.076–39 [Amended]

14. Amend § 160.076–39 as follows:

a. In § 160.076–39(a), remove the words ''section 10'' after the words ''UL 1180'' and add, in their place, the words ''(incorporated by reference, see § 160.076–11)''; and

b. Remove paragraph (e).

Dated: September 23, 2011.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2011–25034 Filed 9–28–11; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[DA 11–1333]

Possible Revision or Elimination of Rules

AGENCY: Federal Communications Commission.

ACTION: Review of regulations; comments requested.

SUMMARY: This document invites members of the public to comment on the Federal Communication Commission's (FCC's or Commission's) rules to be reviewed pursuant to section 610 of the Regulatory Flexibility Act of 1980, as amended (RFA). The purpose of the review is to determine whether Commission rules whose ten-year anniversary dates are in the year 2010, as contained in the Appendix, should be continued without change, amended, or rescinded in order to minimize any significant impact the rules may have on a substantial number of small entities. Upon receipt of comments from the public, the Commission will evaluate those comments and consider whether action should be taken to rescind or amend the relevant rule(s).

DATES: Comments may be filed on or before November 28, 2011.

FOR FURTHER INFORMATION CONTACT: Sharon K. Stewart, Chief of Staff, Office of Communications Business Opportunities (OCBO), Federal Communications Commission, (202) 418–0990. People with disabilities may contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: Each year the Commission will publish a list of ten-year old rules for review and comment by interested parties pursuant to the requirements of section 610 of the RFA.

FCC Seeks Comment Regarding Possible Revision or Elimination of Rules Under The Regulatory Flexibility Act, 5 U.S.C. Section 610

CB Docket No. 11–72

Comment Period Closes: November 28, 2011.

1. Pursuant to the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 610, the FCC hereby publishes a plan for the review of rules adopted by the agency in calendar year 2000 which have, or might have, a significant economic impact on a substantial number of small entities. The purpose of the review is to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objective of section 610 of the RFA, to minimize any significant economic impact of such rules upon a substantial number of small entities.

2. This document lists the FCC regulations to be reviewed during the next twelve months. In succeeding years, as here, the Commission will publish a list for the review of regulations promulgated ten years preceding the year of review.

3. In reviewing each rule in a manner consistent with the requirements of section 610 the FCC will consider the following factors:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates, or conflicts with other federal rules and, to the extent feasible, with state and local governmental rules; and

(e) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

4. Appropriate information has been provided for each rule, including a brief description of the rule and the need for, and legal basis of, the rule. The public is invited to comment on the rules chosen for review by the FCC according to the requirements of section 610 of the RFA. All relevant and timely comments will be considered by the FCC before final action is taken in this proceeding.

Comments may be filed using the Commission's Electronic Comment Filing System (''ECFS'') or by filing paper copies. Comments filed through the ECFS may be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket (proceeding) and ''DA'' number.

Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message: ''get form.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and one copy of each filing. Again, please include the docket (proceeding) and ''DA'' number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. Again, please include the docket (proceeding) and ''DA'' number.

The filing hours at this location are 8 a.m. to 7 p.m.

All hand deliveries must be held together with rubber bands or fasteners.

- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.
- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Comments in this proceeding will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300 or 800–378–3160, facsimile 202–488–5563, or via e-mail at *fcc@bcniweb.com*. 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 & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

For information on the requirements of the RFA, the public may contact Carolyn Fleming Williams, Senior Deputy Director, Office of Communications Business Opportunities, 202–418–0990 or visit *http://www.fcc.gov/ocbo.*

Federal Communications Commission.

Thomas A. Reed,

Director, Office of Communications Business Opportunities.

Appendix

List of rules for review pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 610, for the ten-year period beginning in the year 2000 and ending in the year 2010. All listed rules are in Title 47 of the Code of Federal Regulations.

Part 0—Commission Organization

Subpart A—Organization

Brief Description: Section 0.185 of the rules sets forth the responsibilities of the Bureaus and Offices in providing assistance to the Chief, Public Safety and Homeland Security Bureau, in the performance of that person's duties with respect to homeland security, national security, emergency management and preparedness, disaster management, defense, and related activities. Section 0.185(e) requires the head of each Bureau and Office to either serve as Public Safety/Homeland Security Liaison to the Public Safety and Homeland Security Bureau or designate a Deputy Chief of the Bureau or Office to serve as liaison.

Need: This rule ensures that the public safety initiatives of the Public Safety and Homeland Security Bureau will be coordinated efficiently and comprehensively with all the Commission's regulatory activities.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 155b, 155(c) and 303(r).

Section Number and Title:

0.185(e)—Responsibilities of the bureaus and staff offices.

Subpart B—Delegations of Authority

Brief Description: These rules prescribe the duties that the Commission authorizes to be performed by its various Bureaus and Offices. Section 0.251 delegates authority to the Office of General Counsel. Section 0.251(i) states that the General Counsel may perform all administrative determinations provided for by the Debt Collection Improvement Act of 1996.

Need: This rule allows the efficient resolution of monetary claims of the United States Government that arise from the activities of the Commission.

Legal Basis: 31 U.S.C. 3711; 47 U.S.C. 152, 153, 154, 155, 301, 303, 307, 308, 309, 315 and 317.

Section Number and Title:

0.251(i)—Authority delegated [to General Counsel].

Part 1—Practice and Procedure

Subpart Q—Competitive Bidding Proceedings

Brief Description: The Part 1 rules state the general rules of practice and procedure before the Federal Communications Commission. Subpart Q sets forth the provisions implementing section 309(j) of the Communications Act of 1934, as amended, authorizing the Commission to employ competitive bidding procedures to resolve mutually exclusive applications for certain initial licenses.

Need: These rules are needed to implement the Commission's competitive bidding authority under section 309(j) of the Communications Act of 1934, as amended, including the designated entity and tribal land bidding credit programs.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r) and 309(j).

Section Number and Title:

1.2107(e)—Submission of down payment and filing of long-form applications.

1.2110(b), (c), (f)(3)—Designated entities.

Subpart V—Implementation of Section 706 of the Telecommunications Act of 1996; Commission Collection of Advanced Telecommunications Capability Data

Brief Description: Part 1 contains rules relating to Commission practices and procedures. Subpart V sets forth the rules by which certain commercial and government-controlled entities report data to the Commission concerning the deployment of advanced telecommunications capability, defined pursuant to 47 U.S.C. 157 as ''high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology,'' and the deployment of services that are competitive with advanced telecommunications capability.

Need: These rules are needed to implement the Commission's data collection authority with regard to the deployment of advanced telecommunications capabilities pursuant to section 706 of the Telecommunications Act of 1996.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r) and 309.

Section Number and Title:

1.7000—Purpose.

1.7001—Scope and content of filed reports.

1.7002—Frequency of reports.

Part 20—Commercial Mobile Radio Services

Brief Description: These rules make following adjustments to the deployment schedule that must be followed by wireless carriers that choose to implement enhanced 911 Phase II service using a handset-based technology. The rules defer the date for initial distribution of Automatic Location Identification (ALI)-capable handsets by seven months, adjust the timetable for carriers to meet certain interim benchmarks for activating new ALI-capable handsets, defer the date by which a carrier must achieve full penetration of ALI-capable handsets until December 31, 2005, modify the manner in which the Commission defines full penetration by adopting a requirement that carriers achieve 95 percent penetration of ALI-capable handsets by the December 31, 2005 date, eliminate the separate handset phase-in schedule triggered by a request from a Public Safety Answering Point, and extend the deadline for carriers to file Phase II enhanced 911 implementation reports.

Need: These rules establish a more practical, understandable, and workable schedule for implementation of handset-based ALI solutions for enhanced 911 Phase II service.

Legal Basis: 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

Section Number and Title:

20.18(g)(1), (g)(2); and 20.18(i)—911 service.

Part 22—Public Mobile Services

Subpart H—Cellular Radiotelephone Service

Brief Description: Part 22 contains the rules relating to the Public Mobile Services, specifically, the rules establishing the requirements and conditions under which radio stations may be licensed and used in those services. Subpart H sets forth the rules governing the licensing and operation of cellular radiotelephone systems.

Need: The rule establishes the terms and conditions under which parties in this service can seek and obtain approval for partitioning and/or disaggregation of a license.

Legal Basis: 47 U.S.C. 154, 222, 303, 309 and 332.

Section Number and Title:

22.948—Partitioning and disaggregation.

Part 24—Personal Communications Services

Subpart D—Narrowband PCS

Brief Description: Part 24 contains the rules relating to the Personal Communications Services (PCS), specifically, the rules establishing the requirements and conditions under which radio stations may be licensed and used in those services. Subpart D sets forth the rules governing the licensing and operation of narrowband PCS systems authorized in the 901–902, 930–931, and 940–941 MHz bands (900 MHz band).

Need: The rule establishes the terms and conditions under which parties in this service can seek and obtain approval for partitioning and/or disaggregation of a license.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

Section Number and Title:

24.104—Partitioning and disaggregation.

Subpart F—Competitive Bidding Procedures for Narrowband PCS

Brief Description: Part 24 contains the rules relating to the Personal Communications Services (PCS), specifically, the rules establishing the requirements and conditions under which radio stations may be licensed and used in those services. Subpart F sets forth the rules governing mutually exclusive initial applications for narrowband PCS service licenses, which are subject to competitive bidding.

Need: These rules are needed to implement the Commission's competitive bidding authority under section 309(j) of the Communications Act of 1934, as amended.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

Section Number and Title:

24.321—Designated entities.

Subpart H—Competitive Bidding Procedures for Broadband PCS

Brief Description: Part 24 contains the rules relating to the Personal Communications Services (PCS), specifically, the rules establishing the requirements and conditions under which radio stations may be licensed and used in those services. Subpart H sets forth the provisions implementing section 309(j) of the Communications Act of 1934, as amended, authorizing the Commission to employ competitive bidding procedures to resolve mutually exclusive applications for initial licenses.

Need: These rules are needed to set forth licensing requirements and to implement the Commission's competitive bidding authority under 47 U.S.C. 309(j).

Legal Basis: 47 U.S.C. 151, 154, 155, 157, 225, 301, 302, 303, 309 and 332.

Section Number and Title:

24.709—Eligibility for licenses for frequency Blocks C or F.

Subpart I—Interim Application, Licensing, and Processing Rules for Broadband PCS

Brief Description: Part 24 contains the rules relating to the Personal Communications Services (PCS), specifically, the rules establishing the requirements and conditions under which radio stations may be licensed and used in those services. Subpart I sets forth the rules governing interim applications, licensing, and other procedural rules for broadband PCS.

Need: This rule clarifies that no frequency Block C or Block F won in closed bidding can be assigned or transferred unless the application for assignment or transfer of control is filed on or after the date the initial licensee has notified the Commission that it has met its five-year construction build-out requirement.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

Section Number and Title:

24.839(a)(6)—Transfer of control or assignment of license.

Part 27—Miscellaneous Wireless Communications Services

Subpart A—General Information

Brief Description: Part 27 contains the Commission rules relating to miscellaneous wireless communications services (WCS), specifically, the conditions under which spectrum is made available and licensed for the provision of wireless communications services in the 2305–2320 MHz and 2345–2360 MHz; 746–763 MHz, 775–793 MHz, and 805–806 MHz; 698–746 MHz; (4) 1390–1392 MHz; 1392–1395 MHz and 1432–1435 MHz; 1670–1675 MHz; 1710–1755 MHz and 2110–2155 MHz; and 2495–2690 MHz bands. Subpart A sets for the conditions and parameters under which WCS licenses will be authorized.

Need: The rules set forth the availability of certain frequencies and services areas that certain WCS licensees may use.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336 and 337.

Section Number and Title:

27.5(b)—Frequencies.

27.6(b)—Service areas.

Subpart B—Applications and Licenses

Brief Description: Part 27 contains the Commission rules relating to miscellaneous wireless communications services (WCS), specifically, the conditions under which spectrum is made available and licensed for the provision of wireless communications services in the 2305–2320 MHz and 2345–2360 MHz; 746–763 MHz, 775–793 MHz, and 805–806 MHz; 698–746 MHz; (4) 1390–1392 MHz; 1392–1395 MHz and 1432–1435 MHz; 1670–1675 MHz; 1710–1755 MHz and 2110–2155 MHz; and 2495–2690 MHz bands. Subpart B sets forth the terms and conditions under which parties may apply and receive authorization to operate a WCS system.

Need: These rules clarify that an applicant and licensee may provide a variety of services (e.g., common carrier, private internal, broadcast, etc.) within a single authorization, provided the licensee complies with all other applicable Commission rules; they also establish the procedural rules that applicants must follow to obtain Commission authorization for a given WCS service.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336 and 337.

Section Number and Title:

27.10—Regulatory status.

27.11(c)—Initial authorization.

Subpart C—Technical Standards

Brief Description: Part 27 contains the Commission rules relating to miscellaneous wireless communications services (WCS), specifically, the conditions under which spectrum is made available and licensed for the provision of wireless communications services in the 2305–2320 MHz and 2345–2360 MHz; 746–763 MHz, 775–793 MHz, and 805–806 MHz; 698–746 MHz; (4) 1390–1392 MHz; 1392–1395 MHz and 1432–1435 MHz; 1670–1675 MHz; 1710–1755 MHz and 2110–2155 MHz; and 2495–2690 MHz bands. Subpart C sets forth the various technical standards with which a WCS licensee must comply.

Need: These rules set forth emission limitations for WCS licensees in various bands; establish standards such that WCS licensees will not harmfully interfere with television or DTV broadcasting; and establish procedures and consequences for when a WCS licensee, either voluntarily or involuntarily, discontinues operations.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336 and 337.

Section Number and Title:

27.53(c), (d), (e)—Emission limits.

27.60—TV/DTV interference protection criteria.

27.66—Discontinuance, reduction, or impairment of service.

Subpart F—Competitive Bidding Procedures for the 698–806 MHz Band

Brief Description: Part 27 contains the Commission rules relating to miscellaneous wireless communications services (WCS), specifically, the conditions under which spectrum is made available and licensed for the provision of wireless communications services in the 2305–2320 MHz and 2345–2360 MHz; 746–763 MHz, 775–793 MHz, and 805–806 MHz; 698–746 MHz; (4) 1390–1392 MHz; 1392–1395 MHz and 1432–1435 MHz; 1670–1675 MHz; 1710–1755 MHz and 2110–2155 MHz; and 2495–2690 MHz bands. Subpart F sets forth the rules by which mutually exclusive applications in the 698–806 MHz band will be considered.

Need: These rules implement the Commission's competitive bidding authority under 47 U.S.C. 309(j) for initial applications in the 698–806 MHz bands.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336 and 337.

Section Number and Title:

27.501—746–763 MHz, 775–793 MHz, and 805–806 MHz bands subject to competitive bidding.

27.502—Designated entities.

Subpart G—Guard Band A and B Blocks (757–758/787–788 MHz and 775–776/805–806 MHz Bands)

Brief Description: Part 27 contains the Commission rules relating to miscellaneous wireless communications services (WCS), specifically, the conditions under which spectrum is made available and licensed for the provision of wireless communications services in the 2305–2320 MHz and 2345–2360 MHz; 746–763 MHz, 775–793 MHz, and 805–806 MHz; 698–746 MHz; (4) 1390–1392 MHz; 1392–1395 MHz and 1432–1435 MHz; 1670–1675 MHz; 1710–1755 MHz and 2110–2155 MHz; and 2495–2690 MHz bands. Subpart G sets forth the rules under which guard band A and B block licensees may operate.

Need: These rules establish the procedural parameters under which a guard band A and B block licensee may receive an authorization and operate, including the requirements should such a licensee lease a portion of its spectrum.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336 and 337.

Section Number and Title:

27.601—Authority and coordination requirements.

27.602—Lease agreements.

27.604—Limitation on licenses won at auction.

27.607—Performance requirements and annual reporting requirement.

Part 51—Interconnection

Subpart C—Obligations of All Local Exchange Carriers

Brief Description: This subsection generally implements section 251(c) of the Communications Act of 1934, as amended. Section 51.230 provides that advanced services loop technologies are presumed acceptable for deployment under specific circumstances. It further provides that incumbent local exchange carriers cannot deny a carrier's request to deploy a technology that is presumed acceptable for deployment without first demonstrating to the relevant state commission that deployment of that technology would significantly degrade performance of other advanced services or traditional voiceband services. Finally, a carrier seeking to establish that the deployment of a specific technology falls within the presumption of acceptability bears the burden of demonstrating to the relevant state commission that its proposed deployment meets the threshold for a presumption of acceptability and will not, in fact, significantly degrade performance of other advanced services or traditional voice band services.

Need: These rules are necessary to foster a competitive market in the telecommunications industry, and to promote the deployment of broadband infrastructure and other network investment. These rules also ensure that competitors receive prompt and accurate notice of changes that could affect their ability to interconnect with the incumbent's network.

Legal Basis: 47 U.S.C. 251(a), 251(c)(2) and (6) and 251(d).

Section Number and Title:

51.230—Presumption of acceptability for deployment of an advanced services loop technology.

Brief Description: This subsection generally implements section 251(c) of the Communications Act of 1934, as amended. Section 51.231 provides that incumbent local exchange carriers must provide particular information to carriers requesting access to a loop or high-frequency portion of the loop to provide advanced services. The requesting carrier must provide to the incumbent LEC information on the type of technology the carrier seeks to deploy, both at the time it seeks access to a loop or high frequency portion of a loop to provide advanced services and when notifying the incumbent LEC of any proposed change in the advanced services technology that the carrier uses on the loop.

Need: These rules are necessary to foster a competitive market in the telecommunications industry, and to promote the deployment of broadband infrastructure and other network investment. These rules also ensure that competitors receive prompt and accurate notice of changes that could affect their ability to interconnect with the incumbent's network.

Legal Basis: 47 U.S.C. 251(a), 251(c)(2) and (6) and 251(d).

Section Number and Title:

51.231—Provision of information on advanced services deployment.

Brief Description: This subsection generally implements section 251(c) of the Communications Act of 1934, as amended. Section 51.232 prohibits incumbent local exchange carriers from designating, segregating or reserving particular loops or binder groups for use solely by any particular advanced services loop technology, except for loops on which a known disturber is deployed. The rule also specifies that any party seeking designation as a known disturber should file a petition for declaratory ruling with the Commission.

Need: These rules are necessary to foster a competitive market in the telecommunications industry, and to promote the deployment of broadband infrastructure and other network investment. These rules also ensure that competitors receive prompt and accurate notice of changes that could affect their ability to interconnect with the incumbent's network.

Legal Basis: 47 U.S.C. 251(a), 251(c)(2) and (6) and 251(d).

Section Number and Title:

51.232—Binder group management.

Brief Description: This subsection generally implements section 251(c) of the Communications Act of 1934, as amended. Section 51.233 sets forth the steps that must be taken by a carrier claiming that a deployed advanced service is significantly degrading the performance of other advanced services, including notifying the deploying carrier and allowing that carrier a reasonable opportunity to correct the problem. The rule provides that, where a carrier demonstrates that a deployed technology is significantly degrading the performance of other advanced services or traditional voice-band services, the deploying carrier must discontinue deployment of that technology and migrate its customers to technologies that will not significantly degrade the performance of other such services. The rule further specifies that, if the asserted degradation goes unresolved, the carrier whose services are being degraded must make a showing of degradation before the relevant state commission.

Need: These rules are necessary to foster a competitive market in the

telecommunications industry, and to promote the deployment of broadband infrastructure and other network investment. These rules also ensure that competitors receive prompt and accurate notice of changes that could affect their ability to interconnect with the incumbent's network.

Legal Basis: 47 U.S.C. 251(a), 251(c)(2) and (6) and 251(d).

Section Number and Title:

51.233—Significant degradation of services caused by deployment of advanced services.

Subpart D—Additional Obligations of Incumbents Local Exchange Carriers

Brief Description: This subsection implements section 251(c) of the Communications Act of 1934, as amended. Section 51.323(l) sets forth deadlines within which an incumbent LEC must offer to provide, and provide, all forms of physical collocation, except in circumstances where a state sets its own deadlines or the incumbent LEC has demonstrated to the state commission that physical collocation is not practical for technical reasons or because of space limitations.

Need: These rules are necessary to foster a competitive market in the telecommunications industry, and to promote the deployment of broadband infrastructure and other network investment. They help ensure that competitors are able to collocate incumbent LEC premises in a timely manner, in accordance with section 251(c)(6) of the Communications Act.

Legal Basis: 47 U.S.C. 251(c)(6).

Section Number and Title:

51.323(l)—Standards for physical collocation and virtual collocation.

Subpart G—Resale

Brief Description: These subsections generally implement section 251(b)(5) of the Communications Act of 1934, as amended. Sections 51.605(c) through (e) help define which incumbent LEC services are subject to the resale obligations in section 251(b)(5) and other Commission rules. These rules exempt from the scope of that resale obligation exchange-access services (except to the extent that they are advanced telecommunications services that are sold on a retail basis to residential and business end-users that are not telecommunications carriers) and advanced telecommunications services sold to ISPs as an input component to the ISPs' retail Internet service offerings. These rules also prohibit the incumbent LEC from placing restrictions on the resale of such services in certain circumstances.

Need: These rules are necessary to ensure that the incumbent LECs and their competitors understand the scope of the incumbent LECs resale obligations under section 251(b)(5).

Legal Basis: 47 U.S.C. 251(b)(5).

Section Number and Title:

51.605(c) through (e)—Additional obligations of incumbent local exchange carriers.

Part 52—Numbering

Subpart A—Scope and Authority

Brief Description: Section 52.5(i) sets forth the definition of ''service provider'' as used in the Commission's rules governing numbering.

Need: This rule is necessary to allow the Commission to monitor closely the way numbering resources are used within the North American Numbering Plan (''NANP'').

Legal Basis: 47 U.S.C. 201–205 and 251.

Section Number and Title:

52.5(i)—Definitions.

Subpart B—Administration

Brief Description: Section 52.7(g) through (j) sets forth definitions of terms used in the Commission's rules governing thousands-block pooling.

Need: This rule is necessary to allow the Commission to monitor closely the way numbering resources are used within the NANP.

Legal Basis: 47 U.S.C. 201–205 and 251.

Section Number and Title:

52.7(g) through (j)—Definitions.

Brief Description: Section 52.15(f) through (j) sets forth a mandatory data reporting requirement, a uniform set of categories of numbers for which carriers must report their utilization, requirements for applications for numbering resources, a utilization threshold framework to increase carrier accountability and incentives to use numbers efficiently, and procedures for reclamation of numbering resources.

Need: This rule is necessary to allow the Commission to monitor closely the way numbering resources are used within the NANP.

Legal Basis: 47 U.S.C. 201–205 and 251.

Section Number and Title:

52.15(f) through (j)—Central office code administration.

Subpart C—Number Portability

Brief Description: Section 52.20 specifies that all carriers capable of providing local number portability must participate in thousands-block number pooling where it is implemented and consistent with the national thousands-block number pooling framework established by the Commission. The rule requires that all carriers required to participate in thousands-block number pooling must donate thousands-blocks with less than ten percent contamination to the thousands-block number pool for the rate center within which the numbering resources are assigned. However, the rule permits those service providers to maintain at least one thousands-block per rate center, even if less than ten percent contaminated, as an initial block or footprint block. Telephone numbers assigned to customers of service providers from donated thousands-blocks that are contaminated will be ported back to the donating service provider. Finally, the rule provides for a Thousands-Block Pooling Administrator.

Need: This rule is necessary to address and resolve one of the major factors that contributes to numbering resource exhaust: The allocation of numbers in blocks of 10,000, irrespective of the carrier's actual need for new numbers.

Legal Basis: 47 U.S.C. 201–205 and 251.

Section Number and Title:

52.20—Thousands-block number pooling.

Part 54—Universal Service

Subpart D—Universal Service Support for High Cost Areas

Brief Description: These rules specify the requirements for the high-cost support mechanism. These rules provide requirements for how high-cost support will be calculated and distributed to eligible telecommunications providers.

Need: In implementing statutory requirements for the high-cost program of the universal service support mechanism, these rules ensure that rates in rural, insular and high-cost areas are ''reasonably comparable'' to rates charged for similar services in urban areas.

Legal Basis: 47 U.S.C. 254(b).

Section Numbers and Title:

54.311(d)—Interim hold-harmless support for non-rural carriers.

Subpart E—Universal Service Support for Low-Income Consumers

Brief Description: These rules specify the requirements for the support mechanism for low-income consumers. These rules provide the eligibility requirements for low-income consumers receiving discounted rates for services under the Lifeline and Link-up programs and the requirements for how

reimbursements for low-income support will be calculated and distributed to eligible telecommunications providers.

Need: In implementing statutory requirements for the low-income program of the universal service support mechanism, these rules ensure that low-income consumers, including eligible residents of Tribal lands, have access to quality services at just, reasonable, and affordable rates.

Legal Basis: 47 U.S.C. 151, 154(i), 201, 205 and 254(b).

Section Numbers and Titles:

54.400(e)—Terms and definitions.

54.403(a)(4)—Lifeline support amount.

54.409(c)—Consumer qualification for Lifeline.

54.411(d)—Link-Up program defined.

Subpart J—Interstate Access Universal Service Support Mechanism

Brief Description: These rules provide requirements for the calculation and distribution of support to price-cap carriers as implicit universal service subsidies are removed from their interstate-access rates.

Need: In implementing the statutory requirements, these rules ensure that the universal service interstate-access support mechanism is specific, predictable and sufficient as it moves from implicit to explicit subsidies.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 201–209, 218–222, 254 and 403.

Section Numbers and Titles:

54.800—Terms and definitions.

54.801—General.

54.802—Obligations of local exchange carriers and the Administrator.

54.803—Universal service zones.

54.804—Preliminary minimum access universal service support for a study area calculated by the Administrator.

54.805—Zone and study area above benchmark revenues calculated by the Administrator.

54.806—Calculation by the Administrator of interstate access universal service support for areas served by price cap local exchange carriers.

54.807—Interstate access universal service support.

54.808—Transition provisions and periodic calculation.

54.809—Carrier certification.

Part 61—Tariffs

Subpart A—General

Brief Description: The Part 61 rules are designed to implement the provisions of sections 201, 202, 203, and 204 of the Communications Act of 1934, as amended, and help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. These rules govern the filing, form, content, public-notice periods, and accompanying support materials for tariffs. Section 61.3 sets out definitions for terms used in this Part.

Need: Sections 61.3 (qq) through (zz) were adopted to define terms used elsewhere in the Commission's tariff regulations applicable to interstate, domestic, interexchange services.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403.

Section Number and Title:

61.3(qq) through (zz)—Definitions.

Subpart E—General Rules for Dominant Carriers

Brief Description: The Part 61 rules are designed to implement the provisions of sections 201, 202, 203, and 204 of the Communications Act of 1934, as amended, and help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. These rules govern the filing, form, content, public notice periods, and accompanying support materials for tariffs. Section 61.42 identifies which services carriers are to include in their price cap baskets. These price-cap baskets are then used, among other things, in determining price-cap indices and price cap regulation generally.

Need: Section 61.42(e)(3) was adopted to specify to carriers what service categories and subcategories they must include in their Actual Price Index (API) for the special access services basket. The API is used in connection with any price-cap tariff filing proposing rate changes.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403.

Section Number and Title:

61.42(e)(3)—Price cap baskets and service categories.

Part 64—Miscellaneous Rules Relating to Common Carriers

Subpart D—Procedures for Handling Priority Services in Emergencies

Brief Description: Section 64.402 specifies that commercial mobile radio service providers that elect to provide priority access service to National Security and Emergency Preparedness personnel must adhere to uniform operating protocols.

Need: These provisions are necessary to implement the Commission's responsibility to provide, in the most efficient manner, access to communications infrastructures in order to respond effectively to emergency and disaster situations.

Legal Basis: 47 U.S.C. 202, 205, 302 and 303.

Section Number and Title:

64.402—Policies and procedures for the provision of priority access service by commercial mobile radio service providers.

Part 68—Connection of Terminal Equipment to the Telephone Network

Subpart C—Terminal Equipment Approval Procedures

Brief Description: Part 68, Subpart C, sets forth the rules under which terminal equipment is approved and associated inside (or ''premises'') wiring may be connected to the public telephone network. Section 68.213, in particular, establishes rules for ''unprotected'' premises wiring in simple installations of up to four-line telephone service. The rules authorize premises owners or customers to install and/or maintain wiring on the customer side of the demarcation point, provided that conditions set forth in the rules are met. The rules also establish material requirements for wire and connectors used in such installations, including electrical and labeling requirements.

Need: These rules provide uniform standards to protect the public telephone network from harms caused by terminal equipment and the associated wiring thereto, and ensure that consumer utility of traditional voiceband and advanced services will not be hampered by poor quality inside wiring, while enabling terminal equipment and premises wiring to be provided competitively.

Legal Basis: 47 U.S.C. 151, 154(i), 151(j), 161, 201–205 and 218, 220, 256, 405, and 5 U.S.C. sections 552 and 553.

Section Number and Title:

68.213(c)—Installation of other than ''fully protected'' non-system simple customer premises wiring.

Part 69—Access Charges

Subpart C—Computation of Charges for Price Cap Local Exchange Carriers

Brief Description: The Part 69 rules are designed to implement the provisions of sections 201 and 202 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent LECs. These rules help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. Specifically, § 69.158 facilitates the phase out of implicit subsidies in the access charge regime by making the recovery of LEC universal service charges from end users explicit.

Need: Section 69.158 allows for the LECs' recovery of charges for an explicit, portable interstate access universal service support mechanism.

Legal Basis: 47 U.S.C. 154, 201–203, 205, 218, 220, 254 and 403.

Section Number and Title:

69.15—Universal service end user charges.

Part 73—Radio Broadcast Services

Subpart B—FM Broadcast Stations

Brief Description: This rule identifies Part G as the part of the rules which establish protection standards for full-power stations from the operations of LPFM stations.

Need: This rule clarifies the structure of the FM interference protection scheme.

Legal Basis: 47 U.S.C. 154 and 303.

Section Number and Title:

73.209(c)—Protection from interference.

Brief Description: This rule sets forth a transition rule for stations previously licensed under more permissive Class C antenna height and power requirements.

Need: This rule is needed to provide a basis for a certain class of stations to retain their rights as Class C stations.

Legal Basis: 47 U.S.C. 154 and 303.

Section Number and Title:

73.211(d)—Power and antenna height requirements.

Subpart D—Noncommercial Educational FM Broadcast Stations

Brief Description: This rule identifies Part K as the part of the rules which set forth the procedures for choosing among mutually exclusive applications for noncommercial educational FM stations.

Need: This rule clarifies the structure of the noncommercial educational FM licensing rules.

Legal Basis: 47 U.S.C. 154 and 303.

Section Number and Title:

73.503(e)—Licensing requirements and service.

Brief Description: This rule identifies Part I as the part of the rules which set forth the procedures for choosing among mutually exclusive applications in circumstances in which at least one commercial FM application is mutually exclusive with at least one noncommercial educational FM application.

Need: This rule clarifies the structure of the commercial and noncommercial educational FM licensing rules.

Legal Basis: 47 U.S.C. 154, 303 and 309.

Section Number and Title:

73.513(b)—Noncommercial educational FM stations operating on unreserved channels.

Brief Description: This rule identifies Part G as the part of the rules which establish protection standards for noncommercial educational full-power stations from the operations of LPFM stations.

Need: This rule clarifies the structure of the FM interference protection scheme.

Legal Basis: 47 U.S.C. 154 and 303.

Section Number and Title:

73.514—Protection from interference.

Brief Description: This rule sets forth community of license signal coverage requirements for noncommercial educational FM stations.

Need: This rule is necessary to ensure that every noncommercial educational station provides an adequate strength signal to its community of license.

Legal Basis: 47 U.S.C. 154, 303 and 307.

Section Number and Title:

73.515—NCE FM transmitter location.

Subpart E—Television Broadcast Stations

Brief Description: This rule provides the criteria that an applicant for a new full power television station or modification to existing full power television station must meet in order to protect a Class A television station.

Need: Protection criteria is necessary to protect the operations of Class A television stations and to ensure that new or modified full power television station operate without creating harmful interference.

Legal Basis: 47 U.S.C. 154, 303, 334 and 336.

Section Number and Title:

73.613—Protection of Class A TV stations.

Brief Description: This rule specifies that mutually exclusive applications for noncommercial educational TV stations operating on reserved channels shall be resolved pursuant to the point system.

Need: The point system is needed to continue to foster the growth of noncommercial broadcasting. The point system clearly expresses the public interest factors that the Commission finds important in noncommercial educational broadcasters and selects the applicant who best exemplifies those criteria in an objective manner.

Legal Basis: 47 U.S.C. 154, 303, 334 and 336.

Section Number and Title:

73.621(h)—Noncommercial educational TV stations.

Brief Description: This rule specifies that DTV station applications proposing to expand the DTV station's authorized service area must not cause interference to a Class A TV station or a digital Class A TV Station.

Need: This rule is required because Class A licensees have ''primary'' status as television broadcasters; thereby they have a measure of protection from full-service DTV television stations.

Legal Basis: 47 U.S.C. 154, 303, 334 and 336.

Section Number and Title:

73.623(c)(5), (d) and (e)—DTV applications and changes to DTV allotments.

Subpart G—Low Power FM Broadcast Stations (LPFM)

Brief Description: This rule sets forth complaint and license modification procedures for LPFM stations causing interference to full-power stations operating on third adjacent channels.

Need: The Local Community Radio Act, enacted on January 4, 2011, requires the Commission to modify its rules to eliminate third-adjacent minimum distance separation requirements between LPFM stations and FM, FM translator, and FM booster stations. The Commission will initiate a rulemaking in 2011 to conform this rule to the new legislation.

Legal Basis: 47 U.S.C. 154, 303 and 316.

Section Number and Title:

73.810—Third adjacent channel complaint and license modification procedure.

Brief Description: This rule sets forth complaint procedures in circumstances in which an LPFM station causes interference to the input signal of an FM translator or FM booster station.

Need: The Local Community Radio Act changed the distance separation requirements between LPFM stations and FM translators and FM booster stations. The Commission will initiate a rulemaking in 2011 to conform these complaint procedures to the new legislation.

Legal Basis: 47 U.S.C. 154, 303 and 316.

Section Number and Title:

73.827—Interference to the input signals of FM translator or FM booster stations.

Subpart H—Rules Applicable to All Broadcast Stations

Brief Description: This rule requires each broadcast station to maintain a local or toll-free telephone number in its community of license.

Need: This rule is necessary to promote the localism goals on which the main studio rule is based.

Legal Basis: 47 U.S.C. 154, 303 and 307.

Section Number and Title:

73.1125(e)—Station main studio location.

Brief Description: This rule identifies part K as the part of the rules which sets forth restrictions on the assignment or

transfer of licenses awarded pursuant to noncommercial educational comparative procedures.

Need: This rule is unnecessary. The applicability of the part K rules and their requirements are clearly set forth therein.

Legal Basis: 47 U.S.C. 154, 303 and 309.

Section Number and Title:

73.1150(d)—Transferring a station.

Brief Description: This rule provides the maximum level that may be exceeded by the carrier frequency of a station in the Class A Television Service.

Need: This rule is necessary so that parties seeking to construct stations in the Class A Television Service may specify their proposed facilities and the Commission staff review such facilities before granting a construction permit.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.1545(e)—Carrier frequency departure tolerances.

Brief Description: This rule sets forth the procedures for LPFM stations to operate pursuant to program test authority.

Need: This rule is necessary to permit the prompt initiation of authorized new service from LPFM stations.

Legal Basis: 47 U.S.C. 154 and 303.

Section Number and Title:

73.1620(a)(5)—Program tests.

Brief Description: This rule sets forth the minimum number of hours that stations in the Class A Television Service must operate each week.

Need: This rule is necessary so that stations in the Class A Television Service continue to fully utilize their assigned channel and to serve the public interest.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.1740(a)(5)—Minimum operating schedule.

Brief Description: This rule provides that stations in the Class A Television Service must maintain documentation in their local public inspection file as to their Class A TV continuing eligibility.

Need: This rule is necessary so that stations are able to demonstrate that they continue to be eligible for Class A TV status and so that the public and Commission staff can verify their claimed eligibility.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.3526(e)(17)—Local public inspection file of commercial stations.

Brief Description: This rule provides that stations in the Class A Television Service must give notice of the filing of an application for license.

Need: This rule is necessary so that the public is made aware of the filing of an application for license by a station in the Class A Television Service and the procedures for commenting on such application.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.3580(d)(5)—Local public notice of filing of broadcast applications.

Brief Description: This rule sets forth the procedures for filing petitions to deny requests for the involuntary downgrading of Class C FM stations to Class C0.

Need: This rule is necessary to clarify the pleading procedures that apply in circumstances in which an application is filed which is mutually exclusive with an authorized Class C station operating at less than full Class C antenna height and/or power minimum requirements.

Legal Basis: 47 U.S.C. 154 and 303.

Section Number and Title:

73.3584(d)—Procedure for filing petitions to deny.

Subpart J—Class A Television Broadcast Stations

Brief Description: This rule provides the definitions that will be used throughout subpart J of 47 CFR part 73.

Need: Certain terms need to be defined so as to make clear their usage in subpart J of 47 CFR Part 73 and to avoid having to restate their definition each time they are used.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6000—Definitions.

Brief Description: This rule provides the procedures that applicants seeking new facilities in the Class A Television Service must follow to obtain a construction permit for such facilities and the required types of service they must provide in order to retain their Class A status.

Need: These procedures and policies are necessary in order that applicants for new Class A Television Service may specify their proposed facilities and the Commission staff review such facilities before granting a construction permit.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6001—Eligibility and service requirements.

Brief Description: This rule provides the requirements that applicants seeking new facilities in the Class A Television Service must meet in order to obtain a station in this service.

Need: It is necessary to set out the qualifications for Class A television stations so that applicants for these facilities can make a demonstration of eligibility in their applications and Commission staff can review their qualifications prior to granting a construction permit.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6002—Licensing requirements.

Brief Description: This rule provides the channels that are not available to applicants for Class A television stations.

Need: A list of channels that are not available for Class A television stations is necessary so that applicants in this service may decide the best operational channel for their new facility.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6006—Channel assignments.

Brief Description: This rule provides the power limitations for applicants seeking Class A television stations.

Need: This rule is necessary so that applicants for Class A television stations don't specify too great an operational power and so applicants may decide the best operational parameters for their new facility.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6007—Power limitations.

Brief Description: This rule provides the method for applicants seeking Class A television stations to make distance computations between two reference points.

Need: This rule is necessary so that applicants for Class A television stations are able to correctly calculate the distance between two reference points in their applications and to properly configure the operational parameters for their new facility.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6008—Distance computations.

Brief Description: This rule outlines the operational area of a Class A television station that must be protected from harmful interference by other broadcast stations.

Need: This rule is necessary so that applicants for broadcast facilities will know that operational area or ''contour'' of a Class A television station that must be protected from harmful interference so that such applicants are able to properly configure the operational parameters for their new facility.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6010—Class A TV station protected contour.

Brief Description: This rule outlines those full power television stations that Class A television stations must protect from harmful interference.

Need: This rule is necessary so that applicants for Class A television stations will be able to determine which full power television stations they must protect from harmful interference so that such applicants are able to properly

configure the operational parameters of their new facility.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6011—Protection of TV broadcast stations.

Brief Description: This rule outlines those Class A television, low power television and TV translator stations that a Class A television station seeking to modify its facilities must protect from harmful interference.

Need: This rule is necessary so that applicants for modification to a Class A television station will be able to determine which broadcast stations they must protect from harmful interference so that such applicants are able to properly configure the operational parameters of their new facility.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6012—Protection of Class A TV, low power TV and TV translator stations.

Brief Description: This rule outlines those full power digital television stations that a Class A television station seeking to modify its facilities must protect from harmful interference.

Need: This rule is necessary so that applicants for modification to a Class A television station will be able to determine which full power digital television stations they must protect from harmful interference so that such applicants are able to properly configure the operational parameters of their new facility.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6013—Protection of DTV stations.

Brief Description: This rule outlines those Class A digital television stations that a Class A television station seeking to modify its facilities must protect from harmful interference.

Need: This rule is necessary so that applicants for modification to a Class A television station will be able to determine which Class A digital television stations they must protect from harmful interference so that such applicants are able to properly configure the operational parameters of their new facility.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6014—Protection of digital Class A TV stations.

Brief Description: This rule outlines those full power television stations that a digital Class A television station seeking to modify its facilities must protect from harmful interference.

Need: This rule is necessary so that applicants for modification to a digital Class A television station will be able to determine which full power television stations they must protect from harmful interference so that such applicants are able to properly configure the operational parameters of their new facility.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6016—Digital Class A TV station protection of TV broadcast stations.

Brief Description: This rule outlines those Class A television and digital Class A television stations that a digital Class A television station seeking to modify its facilities must protect from harmful interference.

Need: This rule is necessary so that applicants for modification to a digital Class A television station will be able to determine which Class A and digital Class A television stations they must protect from harmful interference so that such applicants are able to properly configure the operational parameters of their new facility.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6017—Digital Class A TV station protection of Class A TV and digital Class A TV stations.

Brief Description: This rule outlines those full power digital television stations that a digital Class A television station seeking to modify its facilities must protect from harmful interference.

Need: This rule is necessary so that applicants for modification to a digital Class A television station will be able to determine which full power digital television stations they must protect from harmful interference so that such applicants are able to properly configure the operational parameters of their new facility.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6018—Digital Class A TV station protection of DTV stations.

Brief Description: This rule outlines those low power television, TV translator, digital low power television and digital TV translator stations that a digital Class A television station seeking to modify its facilities must protect from harmful interference.

Need: This rule is necessary so that applicants for modification to a digital Class A television station will be able to determine which low power television, TV translator, digital low power television and digital TV translator stations they must protect from harmful interference so that such applicants are able to properly configure the operational parameters of their new facility.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6019—Digital Class A TV station protection of low power TV, TV translator, digital low power TV and digital TV translator stations.

Brief Description: This rule outlines those stations in the land mobile radio service that a digital Class A television station seeking to modify its facilities must protect from harmful interference.

Need: This rule is necessary so that applicants for modification to a digital Class A television station will be able to determine which stations in the land mobile radio service they must protect from harmful interference so that such applicants are able to properly configure the operational parameters of their new facility.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6020—Protection of stations in the land mobile radio service.

Brief Description: This rule provides that Class A television stations may negotiate interference agreements with full power television, digital full power television, low power television, TV translator and other Class A television stations.

Need: This rule is necessary so that Class A television stations will know the parameters by which they may negotiate interference agreements so that Class A television stations are able to properly configure the operational parameters of their facilities.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6022—Negotiated interference and relocation agreements.

Brief Description: This rule provides that Class A television stations may operate distributed transmission systems.

Need: This rule is necessary so that Class A television stations understand that they may operate distributed transmission systems in order to properly configure the operational parameters of their facilities.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6023—Distributed transmission systems.

Brief Description: This rule provides the transmission standards and system requirements that Class A television stations must follow.

Need: This rule is necessary so that Class A television stations understand how they may operate their stations in order to properly configure the operational parameters of their facilities.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6024—Transmission standards and system requirements.

Brief Description: This rule provides the standards that must be followed by Class A television stations when designing their antenna systems and their locations.

Need: This rule is necessary so that Class A television stations understand how to design their antenna systems and where to locate their antennas in order to properly configure the operational parameters of their facilities.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6025—Antenna system and station location.

Brief Description: This rule provides all of the broadcast regulations applicable to other stations in the broadcast services that are also applicable to Class A television stations.

Need: This rule is necessary so that Class A television stations understand which broadcast regulations they are required to follow.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6026—Broadcast regulations applicable to Class A television stations.

Brief Description: This rule provides all applicants for new or modified Class A television stations must provide certain notifications to radio astronomy, research and receiving installations.

Need: This rule is necessary so that applicants for Class A television stations understand which radio astronomy, research and receiving installations they must notify in order to prevent harmful interference to such facilities.

Legal Basis: 47 U.S.C. 336(f).

Section Number and Title:

73.6027—Class A TV notifications concerning interference to radio astronomy, research and receiving installations.

Part 74—Experimental Radio, Auxiliary, Special Broadcast and Other Program Distributional Services

Subpart D—Remote Pickup Broadcast Stations

Brief Description: Subpart D contains rules and licensing requirements applicable to Remote Pickup Broadcast Stations.

Need: The revised rule makes licensees of low power FM stations eligible to hold licenses for remote pickup broadcast stations.

Legal Basis: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

Section Number and Title:

74.432—Licensing requirements and procedures.

Subpart E—Aural Broadcast Auxiliary Stations

Brief Description: Subpart E contains rules and licensing requirements applicable to Aural Broadcast Auxiliary Stations.

Need: The revised rules make licensees of low power FM stations eligible to hold licenses for aural broadcast auxiliary stations and updates frequency assignments to reflect the reallocation of frequencies in the 18 GHz band to the Fixed Satellite Service and the grandfathering of existing facilities.

Legal Basis: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

Section Number and Title:

74.502—Frequency assignment.

74.532—Licensing requirements.

74.551—Equipment changes.

Subpart F—Television Broadcast Auxiliary Stations

Brief Description: Subpart F contains rules and licensing requirements applicable to Television Broadcast Auxiliary Stations.

Need: The revised rules make Class A TV stations eligible to hold licenses for Television Broadcast Auxiliary Stations, required Mobile-Satellite Service (MSS) licensees in the reallocated 1990–2025 MHz and 2165–2200 MHz bands to bear the cost of relocating Broadcast Auxiliary Service licensees in the 1990–2110 MHz band, and updates frequency assignments to reflect the reallocation of frequencies in the 18 GHz band to the Fixed Satellite Service and the grandfathering of existing facilities.

Legal Basis: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

Section Number and Title:

74.600—Eligibility for license.

74.601—Classes of TV broadcast auxiliary stations.

74.602—Frequency assignment.

74.638—Frequency coordination.

74.651—Equipment changes.

74.690—Transition of the 1990–2025 MHz band from the Broadcast Auxiliary Service to emerging technologies.

Subpart G—Low Power TV, TV Translator, and TV Booster Stations

Brief Description: This rule provides the criteria that an applicant for a new low power television, TV translator or TV booster station or modification to same must meet in order to protect a Class A television station.

Need: Protection criteria is necessary to protect the operations of Class A television stations and to ensure that new or modified low power television, TV translator and TV booster stations operate without creating harmful interference.

Legal Basis: 47 U.S.C. 154, 303, 334 and 336.

Section Number and Title:

74.708—Class A TV and digital Class A TV station protection.

Part 76—Multichannel Video and Cable Television Service

Subpart D—Carriage of Television Broadcast Signals

Brief Description: These rules specify the procedures to be used in negotiation of retransmission consent agreements between multichannel video programmers (MVPDs) and broadcast stations under which the MVPDs are permitted to transmit the programming of those broadcast stations.

Need: The rules require that parties negotiate in good faith and establish time limits for complaints in order to ensure that retransmission of broadcast programming may be accomplished.

Legal Basis: 47 U.S.C. 325(b)(3)(C).

Section Number and Title:

76.65—Good faith and exclusive retransmission consent complaints.

Subpart E—Equal Employment Opportunity Requirements

Brief Description: These rules require that multichannel video programming distributors (MVPDs) provide equal opportunity in employment and that MVPDs analyze on an ongoing basis their efforts to recruit, hire, promote and use services without discrimination.

Need: This requirement helps to ensure that MVPDs provide equal opportunity in employment.

Legal Basis: 47 U.S.C. 554.

Section Number and Title:

76.75(g)—Specific EEO program requirements.

Brief Description: These rules require that equal opportunity in employment be afforded by multichannel video programming distributors (MVPDs) to all qualified persons and no person shall be discriminated against in employment. The Commission may issue appropriate sanctions for violation of EEO rules.

Need: Enforcement of the EEO rules is required to ensure compliance.

Legal Basis: 47 U.S.C. 634.

Section Number and Title:

76.77(f)—Reporting requirements and enforcement.

Subpart J—Ownership of Cable Systems

Brief Description: These rules establish limits for ownership, control, and operation of a cable operator by another cable operator, and more specifically, limits on carriage of vertically integrated programming and related recordkeeping requirements.

Need: Recordkeeping requirements referenced in this rule are needed to ensure that cable operators document the nature and extent of their attributable interests in all video programming services.

Legal Basis: 47 U.S.C. 533(f).
Section Number and Title:
76.504—Limits on carriage of vertically integrated programming.

Subpart K—Technical Standards

Brief Description: Cable operators shall be responsible for ensuring that their systems are designed, installed, and operated in a manner that complies with the technical standards of this subpart and shall ensure that their systems are compatible with commercially available consumer electronics equipment.
Need: These rules are required to ensure that cable systems do not scramble the basic tier of programming service and permit the operation of commercially available remote control customer premises equipment.
Legal Basis: 47 U.S.C. 549.
Section Number and Title:
76.630—Compatibility with consumer electronics equipment.

Subpart N—Cable Rate Regulation

Brief Description: These rules define the obligations of cable operators subject to rate regulation, in particular the limits imposed on cable operators' ability to charge subscribers for changes in subscriber services.
Need: The statute requires adoption of rate regulations and imposes limits on charges that cable operators can impose on subscribers.
Legal Basis: 47 U.S.C. 543.
Section Number and Title:
76.980—Charges for customer changes.

Subpart S—Open Video Systems

Brief Description: These rules provide for the certification and programming requirements for open video systems, including recordkeeping requirements.
Need: Maintenance of records documenting nondiscrimination is needed.
Legal Basis: 47 U.S.C. 573.
Section Number and Title:
76.1503(c)(2)(ii)—Carriage of video programming providers on open video systems.

Subpart T—Notices

Brief Description: These rules require cable operators to provide notice to subscribers on a wide assortment of requirements set out in other sections of the part 76.
Need: Time periods are established for cable operator responses to subscribers, franchise authorities, the Commission, and other entities to ensure compliance with cable operator obligations.
Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.
Section Number and Title:
76.1601—Deletion or repositioning of broadcast signals.
76.1602—Customer service—general information.
76.1603—Customer service—rate and service changes.
76.1604—Charges for customer service changes.
76.1605—New product tier.
76.1606—Rate change while complaint pending.
76.1607—Principal headend.
76.1608—System technical integration requiring uniform election of must-carry or retransmission of consent status.
76.1609—Non-duplication and syndicated exclusivity.
76.1610—Change of operational information.
76.1611—Political cable rates and classes of time.
76.1612—Personal attack.
76.1613—Political editorials.
76.1614—Identification of must-carry signals.
76.1515—Sponsorship identification.
76.1616—Contracts with local exchange carriers.
76.1617—Initial must-carry notice.
76.1618—Basic tier availability.
76.1619—Information on subscriber bills.
76.1620—Availability of signals.
76.1621—Equipment compatibility offer.
76.1622—Consumer education program on compatibility.

Subpart U—Documents To Be Maintained for Inspection

Brief Description: These rules require cable operators to maintain records on a wide assortment of matters including a political file, EEO, children's programming, signal leakage, OVS requests for carriage, performance tests, and subscribers.
Need: These records are needed to document compliance with various regulatory requirements.
Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.
Section Number and Title:
76.1700—Records to be maintained by cable system operators.
76.1701—Political file.
76.1702—Equal employment opportunity.
76.1703—Commercial records on children's programs.
76.1704—Proof-of-performance test data.
76.1705—Performance test (channels delivered).
76.1706—Signal leakage logs and repair records.
76.1707—Leased access.
76.1708—Principal headend.
76.1709—Availability of signals.
76.1710—Operator interests in video programming.
76.1711—Emergency alert system (EAS) tests and activation.
76.1712—Open video system (OVS) requests for carriage.
76.1713—Complaint resolution.
76.1714—FCC rules and regulations.
76.1715—Sponsorship identification.
76.1716—Subscriber records and public inspection file.

Subpart V—Reports and Filings

Brief Description: These rules require cable operators to file reports with the Commission on such matters as registration statements, signal leakage monitoring, annual employment reports, and alternative rate regulation agreements.
Need: These rules are necessary to ensure cable operator compliance with related regulatory requirements.
Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.
Section Number and Title:
76.1800—Additional reports and filings.
76.1801—Registration statement.
76.1802—Annual employment report.
76.1803—Signal leakage monitoring.
76.1804—Aeronautical frequencies: Leakage monitoring (CLI).
76.1805—Alternative rate regulation agreements.

Part 80—Stations in the Maritime Services

Subpart B—Applications and Licenses

Brief Description: Part 80 contains rules relating to stations in the maritime services. Subpart B set forth rules regarding applications and licenses in those services.
Need: This rule notifies each Automated Maritime Telecommunications System (AMTS) coast station geographic area licensee that it must make a showing of substantial service within its service area within ten years of the initial license grant, or the authorization becomes invalid and must be returned to the Commission for cancellation.
Legal Basis: 47 U.S.C. 154, 303, 307(e), 309, and 332; 47 U.S.C. 151–155,

301–609; 3 U.S.T. 3450, 3 U.S.T. 4726 and 12 U.S.T. 2377.

Section Number and Title:

80.49(a)(3)—Construction and regional service requirements.

Subpart J—Public Coast Stations

Brief Description: Part 80 contains rules relating to stations in the maritime services. Subpart J, as it relates to Automated Maritime Telecommunications System (AMTS) licensees, sets forth rules on the scope of service, points of communication, frequency use and assignment, and various technical matters.

Need: These rules are meant to prevent harmful interference between an AMTS licensee and broadcasters of television channels 13 and 10; they also permit AMTS licensees to use coast and ship frequencies on a secondary basis to support AMTS deployment in remote fixed locations where other communications facilities are not available; and give AMTS licensees the ability to use any modulation or channelization scheme, as long as that scheme complies with Section 80.211 at the band edges.

Legal Basis: 47 U.S.C. 154, 303, 307(e), 309, and 332; 47 U.S.C. 151–155, 301–609; 3 U.S.T. 3450, 3 U.S.T. 4726 and 12 U.S.T. 2377.

Section Number and Title:

80.475(b)—Scope of service of the Automated Maritime Telecommunications System (AMTS).

80.477(d)—AMTS points of communication.

80.481—Alternative technical parameters for AMTS transmitters.

Part 90—Private Land Mobile Radio Services

Subpart B—Public Safety Radio Pool

Brief Description: These rules contain limitations on the assignment of channels in the Public Safety Radio Pool.

Need: In implementing the goal of efficient spectrum use, these rules list technical and geographic limitations applicable to each frequency in the Public Safety Radio Pool.

Legal Basis: 47 U.S.C. 154, 161, 303 and 332.

Section Number and Title:

90.20(d)(80) through (d)(83); 90.20(g)—Public safety pool.

Subpart C—Industrial/Business Radio Pool

Brief Description: Part 90 contains the Commission rules governing private land mobile radio services. Subpart C sets forth the rules relating to the industrial/business radio pool.

Need: This rules explains the assignment limitations of the Industrial/Business Pool Frequency Table, 47 CFR 90.35(b)(3), specifically, that after January 1, 2005, all stations operating with an authorized bandwidth greater than 11.25 kHz will be secondary to adjacent channel public safety interoperability operations.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r) and 332(c)(7).

Section Number and Title:

90.35(c)(82)—Industrial/Business pool.

Subpart H—Policies Governing the Assignment of Frequencies

Brief Description: These rules promote efficient spectrum use and nationwide interoperability. First, applications for 700 MHz narrowband low power itinerant use channels are exempt from frequency coordination. Second, these rules authorize public safety licensees to share their facilities on a non-profit cost-shared basis with Federal Government entities as well as permit Industrial Business Pool licensees to share their facilities with Public Safety Pool entities and Federal Government entities.

Need: In implementing the goals of efficient spectrum use and nationwide interoperability, these rules eliminate regulatory burdens on public safety entities.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r) and 332(c)(7).

Section Number and Title:

90.175(j)(15)—Frequency coordinator requirements.

90.179(g) and (h)—Shared use of radio stations.

Subpart I—General Technical Standards

Brief Description: Part 90 contains the Commission rules governing private land mobile radio (PLMR) services. Subpart I sets forth the various technical standards with which a PLMR licensee must comply, including standards for acceptability of equipment, frequency tolerance, modulation, emissions, power, and bandwidths.

Need: This rule requires that mobile and portable voice-transmitting equipment operating on 150–174 MHz and 450–470 MHz bands be capable of operating on the corresponding nationwide public safety interoperability calling channel.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r) and 332(c)(7).

Section Number and Title:

90.203(j)(1)—Certification required.

Subpart R—Regulations Governing the Licensing and Use of Frequencies in the 763–775 and 793–805 MHz Bands

Brief Description: Subpart R sets forth the rules governing the licensing and operations of all systems operating in the 763–775 MHz and 793–805 MHz frequency bands. The 769–775/799–805 MHz segment is allocated for narrowband operations. In the narrowband segment, these rules allow the licensing of the 700 MHz General Use Narrowband Channels for assignment to public safety eligibles, subject to Commission approved regional planning committee (RPC) regional plans. The Narrowband State Channels are directly licensed to each state (including U.S. territories, districts, and possessions) and are subject to certain licensing conditions. The Narrowband Low Power Itinerant Channels are licensed for nationwide itinerant operation and are not subject to regional planning or frequency coordination. These rules also specify transmitter power and emission limits to avoid interference and promote efficient spectrum use.

Need: In implementing the goal of nationwide interoperability, these rules designate public safety spectrum for day to day operational needs as well as nationwide voice interoperability, while providing technical requirements to avoid interference and increase spectrum efficiency.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r) and 332(c)(7).

Section Numbers and Title:

90.529—State license.

90.531(b)(4) through (b)(6)—Band plan.

90.541(d)—Transmitting power limits.

90.543(f) and (g)—Emission limits.

Subpart S—Regulations Governing Licensing and Use of Frequencies in the 806–824, 851–869, 896–901, and 935–940 MHz Bands

Brief Description: Part 90 contains the Commission rules governing private land mobile radio services. Subpart S sets forth the rules governing the licensing and operations of all systems operating in the 806–824/851–869 MHz and 896–901/935–940 MHz bands, including eligibility requirements, and operational and technical standards for stations licensed in these bands.

Need: These rules state that local governments applying for Public Safety Pool frequencies are bound by all applicable rules, and that CMRS licensees that are operating in these bands are subject only to the station identification requirements of § 90.425(e), and not § 90.647(a) through (c).

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r) and 332(c)(7).

Section Number and Title:

90.629(f)—Extended implementation period.

90.647(d)—Station identification.

Part 95—Personal Radio Services

Subpart D—Citizens Band (CB) Radio Service

Brief Description: Part 95 contains the Commission rules relating to personal radio services. Subpart D sets forth the rules governing the various citizens band services, including the Citizens Band (CB) Radio Service; Family Radio Service (FRS); Low Power Radio Service (LPRS); Medical Device Radiocommunication Service (MedRadio); Wireless Medical Telemetry Service (WMTS); Multi-Use Radio Service (MURS); and Dedicated Short-Range Communications Service On-Board Units (DSRCS–OBUs).

Need: The rule defines WMTS as a private, short distance data communication service for the transmission of patient medical information to a central monitoring location in a hospital or other medical facility, and lists certain conditions under which WMTS may, and may not, operate.

Legal Basis: 47 U.S.C. 154 and 303.

Section Number and Title:

95.401(e)—(CB Rule 1) What are the Citizens Band Radio Services?

Subpart E—Technical Regulations

Brief Description: Part 95 contains the Commission rules relating to personal radio services. Subpart E sets forth the technical standards under which part 95 licensees may operate.

Need: These rules clarify that a Wireless Medical Telemetry Service (WMTS) licensee may transmit any emission type appropriate for communications in this service, except for video and voice; and set forth other technical standards by which WMTS and Multi-Use Radio Service (MURS) licensees must operate.

Legal Basis: 47 U.S.C. 154 and 303.

Section Number and Title:

95.631(i)—Emission types.

95.632—MURS transmitter frequencies.

95.633(f)—Emission bandwidth.

95.635(e)—Unwanted radiation.

95.639(g)—Maximum transmitter power.

Subpart H—Wireless Medical Telemetry Service (WMTS)

Brief Description: Part 95 contains the Commission rules relating to personal radio services. Subpart H sets forth the rules governing the Wireless Medical Telemetry Service (WMTS), which is defined as a private, short distance data communication service for the transmission of patient medical information to a central monitoring location in a hospital or other medical facility.

Need: This subpart sets out the regulations governing the operation of Wireless Medical Telemetry Devices in the 608–614 MHz, 1395–1400 MHz, and 1427–1432 MHz frequency bands.

Legal Basis: 47 U.S.C. 154 and 303.

Section Number and Title:

95.1101—Scope.

95.1103—Definitions.

95.1105—Eligibility.

95.1107—Authorized locations.

95.1109—Equipment authorization requirement.

95.1111—Frequency coordination.

95.1113—Frequency coordinator.

95.1115—General technical requirements.

95.1117—Types of communications.

95.1119—Specific requirements for wireless medical telemetry devices operating in the 608–614 MHz band.

95.1121—Specific requirements for wireless medical telemetry devices operating in the 1395–1400 MHz and 1427–1432 MHz bands.

95.1123—Protection of medical equipment.

95.1125—RF safety.

95.1127—Station identification.

95.1129—Station inspection.

Subpart J—Multi-Use Radio Service (MURS)

Brief Description: Part 95 contains the Commission rules relating to personal radio services. Subpart J sets forth the rules governing the Multi-Use Radio Service (MURS), which is defined as a private, two-way, short-distance voice or data communications service for personal or business activities of the general public.

Need: This subpart sets out technical and other rules regarding the Multi-Use Radio Service (MURS), which is defined as a private, two-way, short-distance voice or data communications service for personal or business activities of the general public.

Legal Basis: 47 U.S.C. 154 and 303.

Section Number and Title:

95.1301—Eligibility.

95.1303—Authorized locations.

95.1305—Station identification.

95.1307—Permissible communications.

95.1309—Channel use policy.

Part 101—Fixed Microwave Services

Subpart A—General

Brief Description: Subpart A contains the general rules pertaining to Commission's scope and authority and definitions.

Need: The revised rules established definitions relevant to the 24 GHz service and Multiple Address Systems.

Legal Basis: 47 U.S.C. 154 and 303.

Section Number and Title:

101.1—Scope and authority.

101.3—Definitions.

Subpart B—Applications and Licenses

Brief Description: Subpart B sets forth the general filing requirements for applications and licenses in the Fixed Microwave Services.

Need: The revised rules modified the buildout requirements for the 38.6–40.0 GHz band, revised the rules relating to the 24 GHz service, updates frequency assignments to reflect the reallocation of frequencies in the 18 GHz band to the Fixed Satellite Service and the grandfathering of existing facilities, requires Mobile Satellite Service licensees to relocate existing Fixed Service licensees in the 2165–2200 MHz bands in cases where sharing between MSS and FS is not possible, and made various editorial changes to the Part 101 rules.

Legal Basis: 47 U.S.C. 154 and 303.

Section Number and Title:

101.4—Transition plan.

101.17—Performance requirements for the 38.6–40.0 GHz frequency band.

101.21—Technical content of applications.

101.31—Temporary and conditional authorizations.

101.45—Mutually exclusive applications.

101.55—Considerations involving transfer or assignment applications.

101.61—Certain modifications not requiring prior authorization in the Local Multipoint Distribution Service and 24 GHz Service.

101.63—Period of construction; certification of completion of construction.

101.69—Transition of the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.

101.73—Mandatory negotiations.

101.75—Involuntary relocation procedures.

101.81—Future licensing in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.

101.83—Modification of station license.

101.85—Transition of the 18.3–19.3 GHz band from the terrestrial fixed services to the fixed-satellite service (FSS).

101.89—Negotiations.

101.91—Involuntary relocation procedures.

101.95—Sunset provisions for licensees in the 18.30–19.30 GHz band.

101.97—Future licensing in the 18.30–19.30 GHz band.

Subpart C—Technical Standards

Brief Description: Subpart C sets forth technical standards for applications and licenses in the Fixed Microwave Services.

Need: The revised rules establish revised technical standards for the 24 GHz Service, Multiple Address Systems, and Operational Fixed Stations.

Legal Basis: 47 U.S.C. 154 and 303.

Section Number and Title:

101.101—Frequency availability.

101.103—Frequency coordination procedures.

101.105—Interference protection criteria.

101.109—Bandwidth.

101.111—Emission limitations.

101.113—Transmitter power limitations.

101.115—Directional antennas.

101.135—Shared use of radio stations and the offering of private carrier service.

101.139—Authorization of transmitters.

101.141—Microwave modulation.

101.143—Minimum path length requirements.

101.145—Interference to geostationary–satellites.

101.147—Frequency assignments.

Subpart E—Miscellaneous Common Carrier Provisions

Brief Description: Subpart E sets forth miscellaneous provisions applicable to Common Carrier microwave stations.

Need: The revised rules apply requirements relating to discontinuance of service and equal employment opportunities to common carrier operation in the 24 GHz service.

Legal Basis: 47 U.S.C. 154 and 303.

Section Number and Title:

101.305—Discontinuance, reduction or impairment of service.

101.311—Equal employment opportunities.

Subpart G—24 GHz Service and Digital Electronic Message Service

Brief Description: Subpart G sets forth rules for the 24 GHz Service and the Digital Electronic Message Service and provides the provisions implementing Section 309(j) of the Communications Act of 1934, as amended, authorizing the Commission to employ competitive bidding procedures to resolve mutually exclusive applications for initial licenses.

Need: The revised rules establish revised technical and service rules for the 24 GHz Service and implement the Commission's competitive bidding authority under 47 U.S.C. 309(j).

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r) and 309.

Section Number and Title:

101.501—Eligibility.

101.503—Digital Electronic Message Service Nodal Stations.

101.509—Interference protection criteria.

101.511—Permissible services.

101.521—Spectrum utilization.

101.523—Service areas.

101.525—24 GHz system operations.

101.526—License term.

101.527—Construction requirements for 24 GHz operations.

101.529—Renewal expectancy criteria for 24 GHz licenses.

101.531—[Reserved]

101.533—Regulatory status.

101.535—Geographic partitioning and spectrum aggregation/disaggregation.

101.537—24 GHz band subject to competitive bidding.

101.538—Designated entities.

Subpart J—Local Television Transmission Service

Brief Description: Subpart J sets forth rules for the Local Television Transmission Service.

Need: The revised rules revise the frequency assignments available for the Local Television Transmission Service and revise the requirements applicable to operation of such facilities at temporary fixed locations.

Legal Basis: 47 U.S.C. 154 and 303.

Section Number and Title:

101.803—Frequencies.

101.815—Stations at temporary fixed locations.

Subpart O—Multiple Address Systems

Brief Description: Subpart O sets forth the general provisions, system license requirements, and system requirements for Multiple Address Systems as well as the provisions implementing Section 309(j) of the Communications Act of 1934, as amended, authorizing the Commission to employ competitive bidding procedures to resolve mutually exclusive applications for certain initial licenses.

Need: The Subpart O rules establish service and technical rules applicable to Multiple Address Systems and implement the Commission's competitive bidding authority under 47 U.S.C. 309(j).

Legal Basis: 47 U.S.C. 154, 303 and 309.

Section Number and Title:

101.1301—Scope.

101.1303—Eligibility.

101.1305—Private internal service.

101.1307—Permissible communications.

101.1309—Regulatory status.

101.1311—Initial EA license authorization.

101.1313—License term.

101.1315—Service areas.

101.1317—Competitive bidding procedures for mutually exclusive MAS EA applications.

101.1319—Competitive bidding provisions.

101.1321—License transfers.

101.1323—Spectrum aggregation, disaggregation, and partitioning.

101.1325—Construction requirements.

101.1327—Renewal expectancy for EA licensees.

101.1329—EA Station license, location, modifications.

101.1331—Treatment of incumbents.

101.1333—Interference protection criteria.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 27

RIN 2105–AD91

[Docket No. DOT–OST–2011–0182]

Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance (U.S. Airports)

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Department is proposing to amend its rules implementing section 504 of the Rehabilitation Act of 1973, which requires accessibility in airport terminal facilities that receive Federal financial assistance. The proposed rule includes new provisions related to service animal relief areas and captioning of televisions and audio-visual displays that are similar to new requirements applicable to U.S. and foreign air carriers under the Department's Air Carrier Access (ACAA) regulations, 14 CFR part 382. The NPRM also proposes to reorganize the provision in 49 CFR 27.72 concerning mechanical lifts for enplaning and deplaning passengers with mobility impairments, and to amend this provision so airports are required to work not only with U.S. carriers but also foreign air carriers to

ensure lifts are available where level entry loading bridges are not available. This proposed rule would apply to airport facilities located in the U.S. with 10,000 or more annual enplanements and that receive Federal financial assistance.

DATES: Interested persons are invited to submit comments regarding this proposal. Comments must be received on or before November 28, 2011. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may file comments identified by docket number DOT–OST–2011–0182 by any of the following methods:

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

Instructions: You must include the agency name and docket number DOT–OST–2011–0182 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Maegan L. Johnson, Trial Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue, SE., Room W96–464, Washington, DC 20590, (202) 366–9342. You may also contact Blane A. Workie, Deputy Assistant General Counsel, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue, SE., Room W96–464, Washington, DC 20590, (202) 366–9342. Arrangements to receive this notice in an alternative format may be made by contacting the above named individuals.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1996, the U.S. Department of Transportation amended its regulation implementing section 504 of the Rehabilitation Act of 1973 to create a new section 49 CFR 27.72, concerning regulatory requirements for U.S. airports to ensure the availability of lifts to provide level-entry boarding for passengers with disabilities flying on small commuter aircraft. *See* 61 FR 56409. This requirement paralleled the lift provisions applicable to U.S. carriers in the ACAA rule, 14 CFR part 382. On May 13, 2008, the Department of Transportation published a final rule that amended part 382 by making it applicable to foreign air carriers. *See* 73 FR 27614. In addition to making the rule applicable to foreign carriers, the amended part 382 includes provisions that require U.S. and foreign air carriers, in cooperation with airport operators, to provide animal relief areas for service animals that accompany passengers departing, connecting, or arriving at U.S. airports. *See* 14 CFR 382.51(a)(5). Part 382 also requires U.S. and foreign air carriers to enable captioning on all televisions and other audio-visual displays that are capable of displaying captioning and that are located in any portion of the airport terminal to which any passengers have access. *See* 14 CFR 382.51(a)(6). As a result of the 2008 amendment to part 382, the requirements in part 27 do not mirror the requirements applicable to airlines set forth in part 382. In order to harmonize part 27 with the amended part 382, the Department proposes to amend part 27 to add such parallel provisions.

The proposed rule would also update outdated terminology and references that currently exist in 49 CFR part 27. The proposed rule would change the word ''handicapped,'' and similar variations of that word that appear throughout part 27, to ''people first'' language (*e.g.,* ''individuals with disabilities'') consistent with practice under the Americans with Disabilities Act. Additionally, the proposed rule would delete the obsolete reference to the Uniform Federal Accessibility Standards in 49 CFR 27.3(b) and change the language ''appendix A to part 37 of this title'' to ''appendices B and D of 36 CFR part 1191, as modified by appendix A to part 37 of this title.''

Service Animal Relief Areas

The 2008 amendment to part 382 requires U.S. and foreign air carriers to work with airport operators to provide service animal relief areas at U.S. airports. Part 27 does not include a provision that mirrors this requirement. As such, the Department proposes to amend part 27 by inserting a provision that would require airport operators to work with carriers to establish relief areas for service animals that accompany passengers with disabilities departing, connecting, or arriving at U.S. airports.

Part 382 does not provide specific directives regarding the design, number, or location of service animal relief areas an airport should have; it simply requires carriers to provide service animal relief areas in cooperation with the airports and in consultation with service animal training organizations concerning the design of service animal relief areas. However, in a Frequently Asked Questions document issued by the Department's Aviation Enforcement Office on May 13, 2009, examples of factors airlines and airports should consider in designating and constructing areas for service animal relief at U.S. airports are provided.[1] Factors to consider in establishing relief areas include the size and surface material of the area, maintenance, and distance to relief area which could vary based on the size and configuration of the airport. The Department seeks comment about whether it should adopt requirements regarding the design of service animal relief areas and what, if any, provisions the rule should include concerning the dimensions, materials used, and maintenance for relief areas.

We are tentatively proposing a minimum of one service animal relief area for each terminal in an airport. The Department is aware that requiring only one service animal relief area for each terminal in an airport may result in individuals with disabilities missing flights when trying to reach service animal relief areas located outside the sterile area of an airport, especially in

[1] The Transportation Security Administration (TSA) worked with the Department to develop guidelines identifying key security concerns and concepts that should be factored into the planning and design of airport facilities, including service animal relief areas. *See* ''Recommended Security Guidelines for Airport Planning, Design and Construction,'' revised May 2011, available at *http://www.tsa.gov/assets/pdf/airport_security_design_guidelines.pdf.*

larger airports. For this reason, and despite our tentative recommendation of one relief area for each terminal in an airport, the Department seeks comment on what would be an appropriate number of service animal relief areas in an airport. In addition to seeking public comment on how many service animal relief areas should be required at an airport or a terminal, the Department would like to know how that number should be determined. For example, should the number be determined by the size or configuration of the airport (*e.g.,* the number, location and design of terminals and concourses) and/or the amount of time it would take for an individual with a disability to reach a service animal relief area from any gate within the airport? Or should DOT establish a performance requirement that a passenger arriving at any gate with his or her service animal be able to reach a relief area in 10, 20 or some other number of minutes?

The Department also seeks comment on the placement of service animal relief areas, particularly whether service animal relief areas should be located inside or outside the sterile [2] area of an airport. It could be important to have relief areas both inside and outside the sterile area of an airport to ensure that individuals with service animals have access to such areas when traveling. For example, an individual traveling with a service animal could arrive at Gate C3 and have an hour to make a connection to a flight at Gate G17. If the individual must leave the sterile area to find a service animal relief area, travel to and from that area, and then go back through security screening, the individual could have difficulty in making the connecting flight. At the same time, we understand that some airports have expressed security and logistical concerns about the placement of service animal relief areas inside the sterile area of an airport. The Department also recognizes that the Transportation Security Administration (TSA) in May 2011 revised its guidelines ''Recommended Security Guidelines for Airport Planning, Design and Construction,'' to make clear that airports may provide Service Animal Relief Areas in sterile areas of the airport, or may provide escorted access to non-designated outdoor areas for the purpose of service animal relief. The Department also recognizes that coordination with the TSA via each airport's site-specific Airport Security Program would need to occur if service animal relief areas are to be placed inside the sterile area. Consequently, the Department seeks comment on where airport service animal relief areas should be located to ensure that the time and distance to access the service animal relief areas do not create barriers for passengers with disabilities.

Finally, the Department has been made aware that some individuals with disabilities, especially, but not only, individuals who are blind or visually impaired, are experiencing difficulty in locating service animal relief areas at certain airports. Under part 382, passengers who request that a carrier provide them with assistance to an animal relief area should be advised by the carrier of the location of the animal relief area. Additionally, if requested, it would be the responsibility of the carrier to accompany a passenger traveling with a service animal to and from the animal relief area. Nevertheless, we seek comment on whether the rule should include a provision requiring airports to specify the location of service animal relief areas on airport Web sites, maps and/or diagrams of the airport, including whether the relief area is located inside or outside a sterile area. We also seek comment on whether airports should be required to provide signage to assist individuals with disabilities in locating service animal relief areas.

To the extent that the Department issues a final rule with requirements for airports to establish service animal relief areas that are more detailed than the requirements for U.S. and foreign airports that exist in part 382, the Department believes that it is beneficial to have the same requirements apply to U.S. and Foreign airlines. As such, we are soliciting comment on whether any requirement that applies to U.S. airports should also be applied to U.S. and foreign carriers. For example, if the Department creates a requirement that airports must establish service animal relief areas inside the sterile area of an airport, should such a requirement apply to U.S. and foreign air carriers in part 382?

We propose that any final rule that we adopt regarding establishing service animal relief areas take effect 120 days after its publication in the **Federal Register**. We believe this would allow sufficient time for airports to comply with this requirement, particularly since U.S. and foreign airlines are already working with airports to establish and maintain service animal relief areas. We invite comments on whether 120 days is the appropriate interval.

Information for Passengers

As a result of the 2008 amendment of part 382, U.S. and foreign air carriers are required to enable captioning [3] on televisions and other audio-visual displays under their control in terminals to which passengers have access. Currently part 27 does not have a corresponding requirement for U.S. airports. The Department proposes to amend part 27 by inserting a provision that would require airport operators at U.S. airports to enable high-contrast captioning on certain televisions and audio-visual displays in U.S. airports.

Most televisions currently in use at U.S. airports have captioning capabilities because all televisions with screens 13″ or larger in size, made or sold in the U.S. since July 1, 1993, are required by Federal law to have captioning capabilities. Because of this, DOT believes that requiring airports to enable the captioning feature should not be costly or otherwise onerous. We believe compliance with this section is a matter of providing the training necessary to turn on the captioning feature of a television or other audio-visual display. Such training does not appear to require a lengthy amount of time or in-depth instruction. Given the straightforward nature of the implementation involved, the Department believes that the proposed thirty-day implementation period is adequate. DOT seeks comment on any reasons that a longer time frame may be necessary.

Part 27 also does not contain a requirement for airports to provide the same information to deaf or hard of hearing individuals in airports that they provide to other members of the public. It is important that persons with a hearing loss or who are deaf do not miss important information available to others at an airport through the public address system. The Department seeks comment on whether it should require U.S. airports to display messages and pages broadcast over public address systems on video monitors. We also seek comment on whether we should amend 14 CFR part 382 to apply such a requirement to U.S. and foreign air carriers with respect to terminal facilities that a carrier owns, leases or controls. Is visual display of information announced over the public address

[2] The sterile area is the area between the TSA passenger screening checkpoint and the aircraft boarding gates. *See* 49 CFR 1540.5.

[3] High-contrast captioning is defined in 14 CFR 382.3 as ''captioning that is at least as easy to read as white letters on a consistent black background.'' As explained in the preamble to part 382, defining ''high-contrast captioning'' in such a way not only ensures that captioning will be effective but also allows carriers to use existing or future technologies to achieve captioning that are as effective as white on black or more so.

system the best means to disseminate airport-related announcements to passengers with hearing impairments? Should the Department establish a performance standard for providing information to individuals with hearing impairments rather than require airports to use a particular medium (*e.g.,* video monitors, wireless pagers, erasable boards)? Also, we ask interested persons to comment on whether the Department should simply require that airports provide the text of the announcements made over the public address system promptly or should instead require that there be simultaneous visual transmission of the information. We also seek comment on whether all announcements made through the public address system should be displayed in a manner that is accessible to deaf and hard-of-hearing travelers, or only those announcements that are essential, *e.g.,* that pertain to emergencies (fire, bomb threat *etc.*), flight information (gate assignments, delays or cancellations), or individuals being paged. Finally, the Department seeks comment on how much time airports would need to establish a system for displaying announcements and pages broadcast over public address system as well as the cost for establishing such a system.

Boarding Lifts for Aircraft

Approximately 10 years ago, 49 CFR 27.72 was amended to mirror a provision in part 382 that required U.S. air carriers to enter into agreements with airport operators to ensure that lifts are available for enplaning and deplaning passengers with disabilities. As noted above, part 382 was extended to foreign air carriers in 2008. Currently 49 CFR 27.72 does not require U.S. airports to work with foreign carriers to ensure that lifts are available; the language in 49 CFR 27.72 covers only arrangements with U.S. carriers. The proposed rule would impose on U.S. airports the same requirements with respect to foreign carriers that 49 CFR 27.72 currently imposes on them with respect to U.S. carriers. The proposed rule would require airport operators to negotiate in good faith with foreign air carriers to provide, operate and maintain lifts for boarding and deplaning where level-entry loading bridges are not available. Under this proposal, the airport operators would be required to sign, no later than 90 days after publication of the final rule in the **Federal Register**, a written agreement with each foreign air carrier serving that airport that allocates responsibility for providing, operating and maintaining the lifts. We are proposing that the agreement provide that all actions necessary to ensure accessible boarding and deplaning for passengers with disabilities be completed no later than 120 days after the final rule's publication in the **Federal Register**.

Also, the proposed rule would restructure the current lift requirements found in 49 CFR 27.72. When the rule was first written, 49 CFR 27.72 applied to aircraft with a seating capacity of 19 through 30 passengers. This provision was amended in May 3, 2001, to also apply to aircraft with a seating capacity of 31 or more passengers. Because of the implementation timelines specified in the 2001 amendment, 49 CFR 27.72 includes two separate provisions outlining boarding assistance requirements for individuals with disabilities, section 27.72(c) and section 27.72(d). As an editorial matter the proposed rule would eliminate this distinction and make the rule applicable to lifts for boarding any aircraft with a seating capacity of 19 or more passengers that are not boarded via a level-entry loading bridge.

Regulatory Analyses and Notices

A. Executive Orders 13563 and 12866 and DOT Regulatory Policies and Procedures

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 action has been determined to be significant under Executive Order 12866 and the Department of Transportation Regulatory Policies and Procedures because of its considerable interest to the disability community and the aviation industry. However DOT does not believe at this time that this action meets the criteria under the Executive Order for an economically significant rule.

This action is the result of several important regulatory changes made to 14 CFR part 382, the rule implementing the ACAA. The extension to U.S. airports of the current lift provision in 49 CFR part 27, which requires airports to work not only with U.S. but also with foreign air carriers to ensure the availability of lifts, will be of interest to the aviation industry and the public. The Department has attempted to propose this extension in as equitable a manner as possible by applying to U.S. airports the same regulatory provisions that apply to U.S. and foreign air carriers. As noted above, the provisions of the proposed rule apply only to U.S. airports with 10,000 or more annual enplanements and that receive Federal financial assistance.

The rule is not expected to require the purchase of additional lifts, since the approximately 216 affected U.S. airports (*i.e.,* those that are served by foreign flag carriers and that have 10,000 or more enplanements) will already have lifts available by agreement between the airports and U.S. carriers as a result of the existing version of part 27. These airports may have already agreed with foreign carriers, such as certain Canadian, Mexican, or Caribbean carriers that use smaller aircraft that board from the tarmac, to provide this service; most other foreign carriers use larger aircraft that normally board via loading bridges. The effect of the rule would then be only to mandate what has already been done voluntarily. Existing agreements between carriers and airports, however, may need to be adjusted to broaden the availability of the lifts. Nonetheless, the Department seeks comment on whether the rule would require U.S. airports to purchase additional lifts, and if so how many, and what the cost of a typical lift is.

A particularly important element of the proposed rule is the addition of a new provision that requires U.S. airport operators, in cooperation with U.S. and foreign air carriers, to provide service animal relief areas. The proposed rule contemplates a minimum of one relief area for each terminal within an airport; however, the Department is aware that requiring only one service animal relief area for each terminal in an airport may be inadequate as it may result in individuals with disabilities missing flights when trying to reach service animal relief areas located outside the sterile area of an airport, especially in larger airports. Nonetheless, given the widely divergent plans of airports, we are only able to make a plausible assumption about the number of terminals that exist in a given airport based on the size of the airport. Using information provided by the FAA, which categorizes the size of the 368 airports within the United States, we postulate that the 29 large-hub airports contain approximately 7 terminals, the 36 medium-hub airports contain approximately 5 terminals, the 72 small-hub airports contain approximately 3 terminals, and the 231 non-hub airports contain approximately 1 terminal. As

such, we estimate that 830 terminals will exist in the 368 airports in the United States. We estimate that the initial cost for such an area would be approximately $5,000 per terminal, with low- and high-cost alternatives ranging from $1,000 to $10,000. We postulate a likely annual maintenance cost of $1,000 per terminal with a range from $500 to $2,000. The Department seeks comments on these estimates.

Also, the Department believes that most airport video monitors have captioning capability, and turning on the captioning is likely to have minimal costs.

B. Executive Order 13132 (Federalism)

This Notice of Proposed Rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This notice does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. It does not propose any regulation that imposes substantial direct compliance costs on States and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This Notice of Proposed Rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). The funding and consultation requirements of Executive Order 13084 do not apply because this notice does not significantly or uniquely affect the communities of the Indian Tribal governments and does not impose substantial direct compliance costs.

D. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The Department certifies that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) size standards define privately owned airports as small businesses if their annual revenues do not exceed $7 million. Publicly owned airports are categorized as small entities if they are owned by jurisdictions with fewer than 50,000 inhabitants. This rule applies to airports with 10,000 or more annual enplanements, which are primary airports that have more commercial-service traffic and account for 96% of U.S. enplanements per annum. Out of the 368 airports with more than 10,000 enplanements that are potentially affected by the proposed rule, we estimate that approximately 50 to 55 are defined as small entities.

The Department believes that the economic impact will not be significant to these 55 airports because the overall annual costs associated with the rule are not great. The only provision of this rule that we believe may impose measurable costs on airports is the requirement that at least one service animal relief area be made available at each U.S. airport terminal. The estimated total costs for constructing and maintaining relief areas at these airports, assuming that each of these 55 airport would only need one relief area, would range from a low of about $600 to a high of about $3,000, with an expected value of about $1,500. On the basis of this examination, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. A copy of the Regulatory Flexibility Analysis will be placed in docket.

E. Paperwork Reduction Act

This proposed rule adopts new and revised information collection requirements subject to the Paperwork Reduction Act (PRA). The Department will publish a separate notice in the **Federal Register** inviting OMB, the general public, and other Federal agencies to comment on the new and revised information collection requirements contained in this document. As prescribed by the PRA, the requirements will not go into effect until OMB has approved them and the Department has published a notice announcing the effective date of the information collection requirements.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this notice.

Issued this 21st day of September 2011 in Washington, DC.

Ray LaHood,

Secretary of Transportation.

List of Subjects in 49 CFR Part 27

Airports, Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Transportation proposes to amend 49 CFR part 27 as follows:

1. The authority citation for part 27 continues to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16 (a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 5310 (a) and (f); sec. 165 (b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142 nt.).

2. In § 27.3, amend paragraph (b) to read as follows:

(b) Design, construction, or alteration of buildings or other fixed facilities by public entities subject to part 37 of this title shall be in conformance with appendices B and D of 36 CFR part 1191, as modified by appendix A to part 37 of this title. All other entities subject to section 504 shall design, construct, or alter buildings, or other fixed facilities, in conformance with appendices B and D of 36 CFR part 1191, as modified by appendix A to part 37 of this title.

3. In § 27.71, add paragraph (h) and (i) to read as follows:

(h) *Service animal relief areas.* Each airport with 10,000 or more annual enplanements shall consult with service animal training organization(s) and cooperate with airlines that own, lease, or control terminal facilities at that airport to provide at least one animal relief area in each airport terminal for service animals that accompany passengers departing, connecting, or arriving at the airport. To the extent that airports have established animal relief areas prior to the effective date of this subsection and have not consulted with service animal training organization(s), airports shall consult with service animal training organization(s) regarding the sufficiency of all existing animal relief areas.

(i) *High-contrast captioning (captioning that is at least as easy to read as white letters on a consistent background) on television and audio-visual displays.* This subsection applies to airports with 10,000 or more annual enplanements.

(1) Airport operators must enable high-contrast captioning at all times on all televisions and other audio-visual displays that are capable of displaying captions and

that are located in any gate area, ticketing area, first-class or other passenger lounge provided by a U.S. or foreign carrier, or any common area of the terminal, excluding shops and/or restaurants, to which any passengers have access.

(2) With respect to any televisions or other audio-visual displays located in any gate area, ticketing area, first-class or other passenger lounge provided by a U.S. or foreign carrier, or any common area of the terminal, excluding shops and/or restaurants, to which any passengers have access, that provide passengers with safety briefings, information, or entertainment that do not have high-contrast captioning capability, an airport operator must replace these devices with equipment that does have such capability whenever such equipment is replaced in the normal course of operations and/or whenever areas of the terminal in which such equipment is located undergo substantial renovation or expansion.

(3) If an airport acquires new televisions or other audio-visual displays for passenger safety briefings, information, or entertainment on or after [insert effective date of the final rule], such equipment must have high-contrast captioning capability.

4. Amend § 27.72 to read as follows:

§ 27.72 Boarding assistance for aircraft.

(a) This section applies to airports with 10,000 or more annual enplanements.

(b) Airports shall, in cooperation with carriers serving the airports, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other devices that do not require employees to lift or carry passengers up stairs. This section applies to all aircraft with a passenger capacity of 19 or more passenger seats, except as provided in paragraph (e) of this section. Paragraph (c) of this section applies to U.S. carriers and paragraph (d) of this section applies to foreign carriers.

(c) Each airport operator shall negotiate in good faith with each U.S. carrier serving the airport concerning the acquisition and use of boarding assistance devices to ensure the provision of mechanical lifts, ramps, or other devices for boarding and deplaning where level-entry loading bridges are not available. The airport operator must have a written, signed agreement with each U.S. carrier allocating responsibility for meeting the boarding and deplaning assistance requirements of this subpart between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(1) All airport operators and U.S. carriers involved are jointly and severally responsible for the timely and complete implementation of the agreement.

(2) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d) Each airport operator shall negotiate in good faith with each foreign carrier serving the airport concerning the acquisition and use of boarding assistance devices to ensure the provision of mechanical lifts, ramps, or other devices for boarding and deplaning where level-entry loading bridges are not available. The airport operator shall, by no later than December 28, 2011, sign a written agreement with the foreign carrier allocating responsibility for meeting the boarding and deplaning assistance requirements of this subpart between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(1) The agreement shall provide that all actions necessary to ensure accessible boarding and deplaning for passengers with disabilities are completed as soon as practicable, but no later than [insert 120 days after date of publication in **Federal Register** of the final rule].

(2) All airport operators and foreign carriers involved are jointly and severally responsible for the timely and complete implementation of the agreement.

(3) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(e) Boarding assistance agreements required in paragraphs (c) and (d) are not required to apply to the following situations:

(1) Access to float planes;

(2) Access to the following 19-seat capacity aircraft models: The Fairchild Metro, the Jetstream 31 and 32, the Beech 1900 (C and D models), and the Embraer EMB–120;

(3) Access to any other aircraft model determined by the Department of Transportation to be unsuitable for boarding and deplaning assistance by lift, ramp, or other suitable device. The Department will make such a determination if it concludes that—

(i) No existing boarding and deplaning assistance device on the market will accommodate the aircraft without significant risk of serious damage to the aircraft or injury to passengers or employees, or

(ii) Internal barriers are present in the aircraft that would preclude passengers who use a boarding or aisle chair from reaching a non-exit row seat.

(f) When level-entry boarding and deplaning assistance is not required to be provided under paragraph (e) of this section, or cannot be provided as required by paragraphs (b), (c), and (d) of this section (*e.g.,* because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents. However, hand-carrying (*i.e.,* directly picking up the passenger's body in the arms of one or more carrier personnel to effect a level change the passenger needs to enter or leave the aircraft) must never be used, even if the passenger consents, unless this is the only way of evacuating the individual in the event of an emergency.

(g) In the event that airport personnel are involved in providing boarding assistance, the airport shall ensure that they are trained to proficiency in the use of the boarding assistance equipment used at the airport and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

5. In 49 CFR part 27 the word ''nonhandicapped'' is revised to read ''nondisabled'' wherever it occurs. The term ''handicapped person''' is revised to read ''individual with a disability''' wherever it occurs. The term ''handicapped persons'' is revised to read ''individuals with a disability'' wherever it occurs. The term ''qualified handicapped person'' is revised to read ''qualified individual with a disability'' wherever it occurs. The term ''qualified handicapped persons'' is revised to read ''qualified individuals with a disability.'' Wherever the word ''handicapped'' is used without being followed by the words ''person'' or ''persons,'' it is revised to read ''disabled'' wherever it occurs.

[FR Doc. 2011–24849 Filed 9–28–11; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2011–0067; 92210–0–0008–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the American Eel as 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 American eel (*Anguilla rostrata*) as threatened under the Endangered

Species Act of 1973, as amended (Act). 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 American eel is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. 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 November 28, 2011. The deadline for submitting an electronic comment using the Federal eRulemaking Portal (see **ADDRESSES**, below) is 11:59 p.m. Eastern Time on this date. After November 28, 2011, you must submit information directly to the Regional Office (see **FOR FURTHER INFORMATION CONTACT** below). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Enter Keyword or ID box, enter FWS–R5–ES–2011–0067, which is the docket number for this action. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Submit a Comment''.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R5–ES–2011–0067; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept e-mail or faxes. 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).

FOR FURTHER INFORMATION CONTACT: Martin Miller, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Northeast Regional Office, 300 Westgate Center Drive, Hadley, MA 01035; by telephone at (413–253–8615); or by facsimile (413–253–8482). 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 American eel from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek new information not previously available or not considered at the time of the 2007 status review on:

(1) The species' biology, range, and population trends, 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 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, specifically:

(i) Rangewide analysis of the prevalence of the parasite, *Anguillicola crassus,* in American eel;

(ii) Data collection and analysis designed to differentiate between American eel rangewide population fluctuations responding to other natural phenomena, such as ocean conditions, and infections from *Anguillicola crassus;*

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Data that supports or refutes:

(a) Panmixia (having one, well-mixed breeding population), including evidence of genetic differentiation that results in selective growth, sex ratios, increased vulnerability to threats, or habitat preferences;

(b) Existence of population structure to the degree that a threat could have differentiating effects on portions of the population and not on the whole species;

(c) Statistically significant long-term glass eel recruitment declines. If landings data are used, the catch per unit effort is integrated into the results, preferably from more than one location along the Atlantic Coast. Raw data will be accepted; however, data that have not been analyzed will likely have limited value in our assessment.

(4) Information on the correlation between climate change and glass eel recruitment, such as Atlantic oceanic conditions data, analyses, and predictions including, but not limited to:

(a) Climate change predictions over the next 25, 50, 75, and/or 100 years as they relate to ocean circulation, changes in the Sargasso sea circulation, sea surface temperature (SST), or larvae and glass eel food availability, either directly or indirectly through changes in SST that affect primary productivity;

(b) Quantitative research on the food of eel larvae and the relationship of food availability to survival of eel larvae;

(c) Further investigations into the indirect effects of a change in SST on nutrient circulation due to enhanced stratification of the water column and its effects on phytoplankton communities;

(d) The length of time eel larvae take to migrate to the Atlantic coast from the Sargasso Sea;

(e) The impact of food availability along the entire migration route on eel larvae survival;

(f) Threats to the Sargasso Sea of the magnitude that would be predicted to affect glass eel recruitment, and information on increased larval retention in the Sargasso Sea gyre resulting from changes in winds due to climate change.

If, after the status review, we determine that listing the American eel 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, we also request data and information on:

(1) What may constitute ''physical or biological features essential to the conservation of the species,'' within the geographical range currently occupied by the species;

(2) Where these features are currently found;

(3) Whether any of these features may require special management considerations or protection;

(4) Specific areas outside the geographical area occupied by the species that are ''essential for the conservation of the species;'' and

(5) What, if any, critical habitat you think we should propose for the 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 **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hard copy 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 hard copy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding are 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, Northeast Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act 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 April 30, 2010, we received a petition dated April 30, 2010, from Craig Manson, Executive Director of the Council for Endangered Species Act Reliability (CESAR or petitioner), requesting that the American eel be listed by the Service and National Marine Fisheries Service (NMFS) as threatened 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 May 13, 2010, letter to the petitioner, we acknowledged receipt of the petition and stated that the Service, not NMFS, had jurisdiction over the American eel and we would be responding to the petition.

On September 7, 2010, we received a Notice of Intent to Sue (NOI) from the petitioner for failure to respond to the petition. In a November 23, 2010, letter to the petitioner, we stated that the Service's appropriation in fiscal year (FY) 2010 was insufficient to address its large backlog of listing actions, and consequently we had not yet been able to begin work on the petition. We also stated that we anticipated funding becoming available in FY 2011 to work on the petition. On December 29, 2010, we received a letter dated December 23, 2010, from the petitioner requesting clarification on our November 23, 2010, letter. The petitioner asked whether we had made a ''warranted but precluded'' determination due to funding limitations or were merely further acknowledging their petition. In a January 10, 2011, letter to the petitioner, we clarified that the intent of our November 23, 2010, letter was to both acknowledge receipt of the NOI and to explain that it was not practicable for the Service to work on the petition until we received funding to do so. We also stated that we had, as of January 10, 2011, received funding to evaluate the petition.

In a March 9, 2011, letter to the petitioner, we requested copies of the references that were cited as part of the petition but were not furnished with the petition or readily available in our files. On April 1, 2011, we received a letter dated March 31, 2011, from the petitioner stating that the requested citations were available via an internet Google search or through the Department of the Interior library or its interlibrary loan program. On April 4, 2011, we received a second copy of the March 31, 2011, letter with a compact disc containing most, but not all, of the requested references. This finding addresses the petition.

Previous Federal Action(s)

On May 27, 2004, the Atlantic States Marine Fisheries Commission (ASMFC), concerned about extreme declines in the Saint Lawrence River/Lake Ontario (SLR/LO) portion of the species' range, requested that the Service and NMFS conduct a status review of the American eel. The ASMFC also requested an evaluation of the appropriateness of a Distinct Population Segment (DPS) listing under the Act for the SLR/LO and Lake Champlain/Richelieu River portion of the American eel population, as well as an evaluation of the entire Atlantic coast American eel population (ASMFC 2004, p. 1). The Service responded to this request on September 24, 2004; our response stated that we had conducted a preliminary review regarding the potential DPS as described by the ASMFC, and determined that the American eel was not likely to meet the discreteness element of the policy requirements due to lack of population subdivision. Rather, the Service agreed to conduct a rangewide status review of the American eel in coordination with NMFS and ASMFC (Service 2004, p. 1).

On November 18, 2004, the Service and NMFS received a petition, dated November 12, 2004, from Timothy A. Watts and Douglas H. Watts, requesting that the Service and NMFS list the American eel as an endangered species under the Act. The petitioners cited destruction and modification of habitat, overutilization, inadequacy of existing regulatory mechanisms, and other natural and manmade factors (such as contaminants and hydroelectric turbines) as threats to the species. On July 6, 2005, the Service issued a 90-day finding (70 FR 38849), which found that the petition presented substantial information indicating that listing the American eel may be warranted, and initiated a status review.

On February 2, 2007, the Service issued a 12-month finding that listing the American eel as threatened or

endangered was not warranted (72 FR 4967).

Species Information

This section is a summary of the species information presented in the Service's 2007 12-month finding (72 FR 4967), supplemented where noted with more recent citations; for a more complete description of the species' biology, habitat and range, see 72 FR 4967, pp. 4968–4977.

The life history of the American eel begins in the Sargasso Sea, located in the middle of the North Atlantic Ocean, where eggs hatch into a larval stage known as ''leptocephali.'' These leptocephali are transported by ocean currents from the Sargasso Sea to the Atlantic coasts of North America and northern portions of South America. Leptocephali migrate in the surface layer of the ocean where food particles are most abundant. Tsukamoto *et al.* (2009, p. 835) found that leptocephali appear to have a unique mechanism of buoyancy control (chloride cells all over the body surface), that differs from other planktonic animals. The American eel undergoes several stages of metamorphosis, from leptocephali to juveniles arriving in coastal waters as unpigmented ''glass eels.'' When juvenile eels arrive in coastal waters, they can arrive in great density and with considerable yearly variation (ICES 2001, p. 2). Glass eels metamorphose (change) to pigmented ''elvers'' and then develop into ''yellow eels,'' occupying marine, estuarine, and freshwater habitats. American eels begin sexual differentiation at a length of about 20 to 25 centimeters (cm) (7.9 to 9.8 inches (in)) and, depending on eel density, become male or female ''silver eels.'' Upon nearing sexual maturity, these silver eels begin migration toward the Sargasso Sea, completing sexual maturation en route. Spawning occurs in the Sargasso Sea. It is hypothesized that there is an abrupt temperature change (referred to as a temperature front) or other as-yet-unidentified feature that serves as a cue for migrating adults to cease their long migration and begin spawning (Friedland 2007, p. 1). After spawning, the adults die; a species with this life-history trait is known as a semelparous species.

In our 2007 12-month finding, we explained that the American eel is one of 15 ancient species, evolving about 52 million years ago, of the worldwide genus Anguilla. The American eel is a highly resilient species with plastic life-history strategies allowing individuals to adapt to varying conditions. For example, to successfully complete the migration from the continent to the Sargasso Sea (outmigration), great endurance and an extensive fat reserve are required. Larger, fatter eels have an advantage over smaller eels in reaching the Sargasso Sea and having sufficient energy stores to reproduce. Fecundity (a measure of fertility) of American eels varies with body length and habitat occupied, larger female eels occupying upstream habitat produce more eggs than do smaller, estuarine females. Eels from northern areas, where migration distances are great, show slower growth and greater length, weight, and age at migration, preparing them, it has been hypothesized, for the longer migration. American eels in United States southern Atlantic coast waters, although smaller, develop into silver eels about 5 years sooner than northern eels, likely as a result of warmer, more stable water conditions. These southern eels would travel significantly shorter distances back to the Sargasso than would northern eels. Variation in maturation age benefits the population by allowing different individuals of a given year class to reproduce at different times over a period of many years, which increases the chances that some eels will encounter environmental conditions favorable for spawning success and offspring survival. For example, variability in the maturation age of eels born in 2006 may result in spawners throughout 2010 to 2030, during which time favorable environmental conditions are likely to occur at least once.

American eels are currently thought to be one, well-mixed, single breeding (panmictic) population (PBS&J 2008, pp. 2–9; MacGregor *et al.* 2008, p. 2; Fenske 2009, p. 38; Mathers and Stewart 2009, p. 359; Tremblay 2009, p. 85; Jessup 2010, p. 339; Velez-Espino and Koops 2010, pp. 175–181). This panmictic life-history strategy maximizes adaptability to changing environments and is well suited to species that have unpredictable larval dispersal to many habitats (*e.g.,* marine, estuarine, and freshwater). By not exhibiting geographic or habitat-specific adaptations, eels have the ability to rapidly colonize new habitats and to recolonize disturbed ones over wide geographical ranges. The consequence of panmixia to the species' ability to withstand human-caused activities is captured in the following passage by Aoyama (2009, p. 32): ''with a panmictic population structure, overharvesting eels in one area likely will not affect subsequent recruitment to that particular area because new recruits will arrive randomly from spawners that originated from other areas.''

While one study (Cote *et al.* 2009, pp. 1943–1944) preliminarily suggests that regional variations in growth may be genetically related, and possibly call into question our understanding of panmixia in the American eel, the authors state that the genetics have not been rigorously tested, and the analysis may just show the start of possible adaptive population genetic differentiation (Cote *et al.* 2009, pp. 1943–1944; DeLeo *et al.* 2009, pp. 2, 4). If we find in the future that the Cote *et al.* (2009) hypothesis of a genetic basis for regional growth variations does have merit for the American eel, that will change our understanding that the eel is fully panmictic, and the Service may need to reexamine the species-level effects of the various threats discussed below. However, until such time as information becomes available concerning geographically distributed genetic structure for the American eel, we will continue to consider the American eel panmictic, as that life strategy is currently supported by the best scientific information available (PBS&J 2008, pp. 2–9; MacGregor *et al.* 2008, p. 2; Fenske 2009, p. 38; Mathers and Stewart 2009, p. 359, Tremblay 2009, p. 85; Jessup 2010, p. 339; Velez-Espino and Koops 2010, pp. 175–181).

The extensive range of the American eel includes all accessible river systems and coastal areas having access to the western North Atlantic Ocean and to which oceanic currents would provide transport. As a result of oceanic currents, the majority of American eels occur along the Atlantic seaboard of the United States and Canada. The historical and current distribution of the American eel within its extensive continental range is well documented along the United States and Canadian Atlantic coast, and the SLR/LO. The distribution is less well documented and likely rarer, again due to currents, in the Gulf of Mexico, Mississippi watershed, and Caribbean Islands, and least understood in Central and South America.

The American eel is said to occupy the broadest diversity of habitats of any fish species (Helfman *et al.* 1987, p. 42). During their spawning and oceanic migrations, eels occupy salt water, and in their continental phase, use all salinity zones: fresh, brackish, and marine (for detailed habitat use by life stage, see Cairns *et al.* 2005), and some eels move between fresh and brackish water several times throughout their life (Thibault *et al.* 2007, p. 1106; Jessup *et al.* 2008, p. 210). Barring impassable natural or humanmade barriers, eels occupy all freshwater systems, including large rivers and their

tributaries, lakes, reservoirs, canals, farm ponds, and even subterranean springs. The eel's anguillid (eel-shaped) body form allows it to climb when at young stages and under certain conditions (*e.g.,* rough surfaces), enabling it to pass up and over some barriers encountered during upstream migrations in freshwater streams (Craig 2006, pp. 1–4). Eels are able to survive out of water for an exceptionally long time (eels can meet virtually all their oxygen needs through their skin), as long as they are protected from drying (for which their ability to produce mucus is of great adaptive significance). Eels have been seen using overland routes (while moist) when they encounter a barrier, which explains their entrance into landlocked waters (Tesch 2003, pp. 184–185) and their presence above numerous dams and weirs (Service 2005b, pp. 16–18).

No rangewide estimate of abundance exists for the American eel. Information on demographic structure is lacking and difficult to determine because the American eel is panmictic (see above), with individuals randomly spread over an extremely large and diverse geographic range, and with growth rates and sex ratios determined by the environmental conditions they encounter. Because of this unique life history, site-specific information on eels must be evaluated in context of its significance to the entire species. Determining status trends is challenging because the relevant available data are limited to a few locations that may or may not be representative of the species' range. Little information exists about key factors such as mortality and recruitment that could be used to develop an assessment model. (Recruitment refers to juveniles surviving and being added to the population.) In the American eel, recruitment is typically measured by counting glass eels as they reach coastal waters. Furthermore, the ability to make inferences about the species' viability based on available trend information is hampered without an overall estimate of eel abundance (*i.e.,* no abundance data exist for the estuarine and saline habitats). Despite these challenges, the Service determined in its 2007 12-month status review (72 FR 4967) that the entire American eel population appeared stable over the long-term.

The 2007 12-month finding concluded:

> ''we find that the American eel remains widely distributed over their vast range including most of their historic freshwater habitat, eels are not solely dependent on freshwater habitat to complete their lifecycle utilizing marine and estuarine habitats as well, they remain in the millions, that recruitment trends appear variable, but stable, and that threats acting individually or in combination do not threaten the species at a population level. On the basis of the best available scientific and commercial information, we conclude that the American eel is not likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range and is not in danger of extinction throughout all or a significant portion of its range. Therefore, listing of the American eel as threatened or endangered under the Act is not warranted (72 FR 4967, p. 4997).''

The Service acknowledged uncertainties while evaluating the best available data during the status review (72 FR 4967, pp. 4977–4978) and concluded that ''mortality during outmigration due to parasites and contaminants, and the potential effects of contaminants on early life stages, remain a concern,'' but, ''we have no information indicating that these threats are currently causing or are likely to cause population level effects to the American eel'' (72 FR 4967, p. 4996). The Service suggested that ''future research should focus on: The effects of contaminants on outmigration and spawning success and egg viability; the effects during outmigration, contributors to prevalence of, and prevention and/or treatment of, the exotic nematode, *Anguillicola crassus;* and improving the success and cost of downstream passage. In addition, future assessments and measuring the success of conservation actions would be improved by the collection of information useful for population dynamics and an increased understanding of how oceanic conditions affect larval distribution and abundance'' (Bell in litt. 2007, p. 1).

The Service's 2007 status review, documented in our 12-month finding (72 FR 4967), is, to date, the most comprehensive analysis of the American eel's rangewide status. The Service will use the 2007 status review as baseline information in the evaluation of the CESAR petition as well as other information that has become available since the 2007 12-month finding and prior to the receipt of the petition.

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 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 the information regarding threats to the American eel found in the petition and in our files, including our 2007 12-month finding, 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 the American eel is threatened by loss of habitat or range and reductions in habitat (ASMFC 2009, NatureServe 2004), stating ''significant anthropogenic [manmade] changes within the range have reduced the accessible habitat by percentages perilously close to 100 percent in some places'' (Petition, p. 17). The petitioner asserts that ''these reductions in habitat and their causes can have a cascading

adverse effect on eel populations'' (Petition, p. 17). The petitioner also asserts that freshwater riverine systems are the most important habitat for eels and that ''While it is possible that some eels spend their entire life cycle in salt water, oceanic research indicates such behavior is rare and virtually nonexistent; catch data from commercial trawling confirms empirically that this is rare. Certainly the marine component is small and at best an unknown and unquantified life strategy which provides little foundation for reliance on it as a basis for sustaining the American eel production'' (Petition, p. 17). The petitioner also provides summary information regarding freshwater stream habitat loss due to obstructions (*i.e.,* dams) and some eel abundance and density observations throughout the coastal range of the species (Petition, pp. 19–21).

Evaluation of Information Provided in the Petition and Available in Service Files

The petitioner restated much of the information provided in the Service's 2007 12-month finding (72 FR 4967), along with information from a few sources published after the 2007 12-month finding. However, most of these ''new'' sources of information, while published after the 2007 12-month finding, summarize the same historical information regarding habitat loss and degradation available to, and considered by, the Service for the 2007 12-month finding (see Busch *et al.* 1998 cited in ASMFC 2009, Maryland Department of Natural Resources 1999, NatureServe 2004). The petitioner cited information from a book ''Eels at the Edge'' (Casselman and Cairns 2009). This entire book was unavailable to the authors of this 90-day finding to analyze since the petitioner did not provide the requested copy and the entire book did not become available from the Service's files until after the 90-day finding was drafted; however, the book is actually a compilation of papers, many of which (*e.g.,* Weeder and Uphoff (2009) and Welsh and Hammond (2009)) were available and analyzed by us for this 90-day finding. The complete Casselman and Cairns (2009) book will be evaluated during the new 12-month status review.

The Service's Factor A analysis in the 2007 12-month finding (72 FR 4967, pp. 4978–4983) reviewed spawning and ocean migration habitat; estuarine and marine habitat; and freshwater habitat, including lacustrine (lake) habitat, specifically Lake Ontario, and the impacts of barriers (including dams) on distribution. The Service found in the 2007 12-month finding that spawning and ocean habitats were not impacted by significant threats and that American eels used estuarine, marine, and freshwater habitats, including exclusive use of marine and estuarine habitats by some eels (72 FR 4967, p. 4983). Although extensive loss of historical freshwater habitat has occurred due to human-induced barriers (*i.e.,* dams constructed for hydroelectric, water supply, and recreational purposes), any population-level impacts have likely already been realized and there is no indication of future barrier construction that would further limit freshwater habitat (72 FR 4967, p. 4983). The ''American eel remains well-distributed throughout roughly 75 percent of its historical range, mainly in the lower reaches of the watersheds,'' and although American eel abundance has been more affected by barriers than has distribution, ''there is no evidence that the reduction in densities has resulted in a negative population-level effect such as a reduction in glass eel recruitment. Analyses of local and regional declines in abundance do not temporally correlate with the loss of access to freshwater habitat'' (72 FR 4967, p. 4983). The 2007 12-month finding concluded that freshwater, estuarine, and marine habitats were sufficient to sustain American eel populations, and the present or threatened destruction, modification, or curtailment of its habitat or range was not a threat to the American eel (72 FR 4967, pp. 4983, 4996).

In addition to the baseline information in the Service's 2007 12-month finding, new information in the Service's files at the time of the receipt of the petition continues to demonstrate that American eels persist in all three habitat types, despite localized impacts. In some instances, the new information suggests that American eels do more than just ''persist'' in estuarine and coastal marine waters; in fact, those habitat types may be even more important to American eels than we previously thought (Machut *et al.* 2007, p. 1707; Jessup *et al.* 2008, p. 210; Cairns 2009, p. 74; Fenske 2009, p. 75; ICES 2009, p. 1; Jessup *et al.* 2009, pp. 867–868; Jessup 2010, p. 328). Examples of localized impacts to freshwater habitat include a paper by Machut *et al.* (2007, p. 1700) that suggests urbanization in Hudson River tributaries impacts the invertebrate communities used as food for the American eel and may be contributing to the reported decline of American eels from certain portions of their historic range, and a letter from the Service to the City of Raleigh indicating impacts to the Little River in North Carolina if projected water supply and disposal projects proceed (USFWS *in litt.* 2009b). However, we have no information to suggest that these two localized examples are indicative of rangewide impacts to freshwater habitat.

Throughout the freshwater range of the American eel, new eel passage projects (since 2007) have been completed or are planned. While upstream passage facilities are not present everywhere within the American eel's range (Minkkinen and Park 2007, p. 1) and existing upstream passage facilities do cause some mortality, more American eels are passed into the upper reaches of watersheds now than prior to 2007. For example, an eel passage project was completed at the Roanoke Rapids Dam in North Carolina (American Eel Working Group (AEWG) 2010, p. 1; Roanoke Rapids and Gaston 2010, p. 2). Eel passage projects are in variable stages of planning and construction in other watersheds, including in the Potomac River watershed (Chesapeake Bay Field Office (CBFO) 2009, p. 1); at the Stevenson Dam on the Housatonic River and the Taftville Dam on the Shetucket River in Connecticut (Connecticut Department of Environmental Protection (CTDEP 2009, p. 4)); at the Millville, Warren, and Luray Dams on the Shenandoah River in West Virginia (Eyler *et al.* 2008, slide 4; Welsh 2008, slide 22); in the Piedmont region of South Carolina (Rohde *et al.* 2008, p. 82); in the Santee River Basin in South Carolina (Santee River Basin Accord 2008, pp. 6–7); and in Quebec and Ontario Provinces, Canada (Verreault *et al.* 2009b, p. 21). Although the success of ladder placement to minimize entrainment (the process by which aquatic organisms, suspended in water, are pulled through a pump or other device (Webster's On-line Dictionary, 2011)) is specific to each dam (McGrath *et al.* 2009, p. 1), American eels can show a positive, quick response to the placement of ladders and use them to swim past/over barriers (Cairns *et al.* 2008, p. 2; Schmidt *et al.* 2009, p. 718).

Since 2007, more studies on the American eel's use of freshwater, estuarine, and coastal marine waters have been completed. These studies confirm that eels use all three habitat types (Dutil *et al.,* 2009, pp. 1979, 1981; ICES 2009, p. 1) and that brackish (*i.e.,* estuarine waters) and salt water are important for American eel growth, in terms both of faster growth rates and larger size of individuals, and

productivity (Machut *et al.* 2007, p. 1707; Jessup *et al.* 2008, p. 210; Cairns 2009, p. 74; Fenske 2009, p. 75; ICES 2009, p. 1; Jessup *et al.* 2009, pp. 867–868; Jessup 2010, p. 328). For example, Jessop *et al.* (2009, p. 866) found growth rates of 3.2 times greater in American eels that had resided primarily in estuarine waters than those that had resided only in freshwater. Lamson *et al.* (2009, pp. 310, 312) found that on average, eels grew in length 2.2 times faster and gained weight 5.3 times faster in full-strength seawater than did freshwater residents (freshwater residents took 2.4 times longer to reach the silver eel stage). This rapid growth enhances many fitness-related aspects of fish demographics, including quicker progression to reproductive capability and decreased vulnerability to predators, hastening the single reproductive opportunity of these fishes (Cairns *et al.* 2009, p. 2095). The mechanism behind, and the evolutionary advantage of, this rapid growth in saline environments (Cairns *et al.* 2009, p. 2095) and the latitudinal variability in length and age at maturity of both males and females (Jessop 2010, p. 328) continues to intrigue researchers. While there is no indication that the importance of freshwater habitat for American eel has diminished, recent information shows that estuarine (brackish) areas also provide valuable American eel productivity partially due to the increased food availability and decreased exposure to natural and anthropogenic mortality (Lamson *et al.* 2009, p. 311). Some eels move between salt water and brackish water and between brackish water and freshwater several times within their lifetime prior to outmigration to the Sargasso Sea spawning grounds (Jessup *et al.* 2008, p. 210; Thibault *et al.* 2007, p. 1106).

In summary, we find that the information provided in the petition, as well as baseline and other new information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to the present or threatened destruction, modification, or curtailment of the American eel's habitat or range. There is no evidence that additional freshwater habitat is being lost or modified rangewide beyond the already documented historical loss that was previously determined not to be a threat to the American eel. The new information indicates more freshwater habitat is becoming available to the American eel with the installation of upstream passage projects. In addition, information suggests that estuarine and coastal marine habitats are readily used by, and may be more important to, the American eel than previously thought. In our new 12-month status review, we will, however, further investigate any new information on habitat destruction, modification, or curtailment of the species' habitat or range in relation to current or projected population declines.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

Information Provided in the Petition

The petitioner asserts that American eels are commercially harvested at all juvenile and adult life stages and ''it is undisputed that overutilization of American eel is now occurring across the species' range in the United States of America'' (Petition, p. 22). The petitioner cites information from ASMFC (2000) and Geer (2004) that discuss reduction in commercial landings from the historical levels of the mid 1970s and 1950, respectively. The petitioner also cites information from the ASMFC Addendum II (2008) report and 2007 harvest data from State Compliance Reports (2008) that document eel fisheries in almost all States and overall landings of eels decreasing over time. The petitioner asserts that the ASMFC's own records show a failure to implement protective measures for American eels, including restriction or reduction of harvest levels, despite the ''declines in abundance'' (Petition, p. 23). The petitioner also asserts that there is a level of recreational harvest that also contributes to the decline of American eels (Petition, p. 23).

Evaluation of Information Provided in the Petition and Available in Service Files

The information cited in the petition is a compilation of historical information available to, and considered by, the Service in our 2007 12-month finding, as well as more recent raw landing data from years after the 2007 12-month finding. For example, the following references available in the Service's files or provided by the petitioner were published since 2007 but summarized historical data sets, the results of which were already considered in the 2007 12-month finding: Susquehanna River Anadromous Fish Restoration Cooperative (SRAFRC) 2010, Clark 2009, DeLafontaine *et al.* 2009, Mathers and Stewart 2009, Overton and Rulifson 2009, Weeder and Hammond 2009, Weeder and Uphoff 2009, MacGregor *et al.* 2008, and Casselman and Marcogliese 2007. The ASMFC 2007 (petitioner's ASMFC 2008 citation) and ASMFC–AEPRT 2008 reports included raw landing data from 2007.

As explained in the Service's 2007 12-month finding, correlating landings data with long-term increases or decreases in American eel population trends is speculative at best, given the multifaceted analysis required. This analysis has not yet been conducted (72 FR 4967, p. 4986). To determine the impacts of commercial and recreational harvest at a population level, given the assumption that the American eel is panmictic, the following factors must be taken into account: ''(1) The level of individuals [that] are not subjected to fishing pressure; (2) the theory that fishing of glass eels and elvers does not necessarily represent a substantial loss to reproductive capacity of the species; (3) the vast areas that remain unfished; and (4) the lack of evidence that there is a reduction in glass and elver recruitment rangewide'' (72 FR 4967, p. 4986).

The petitioner states that the ASMFC Addendum II (petitioner's ASMFC 2008 citation, our ASMFC 2007 reference) indicates that recreational fishing of American eels stems from incidental bycatch by anglers, commercial bait for sport fish such as striped bass, and some amount of bait use by recreational fisherman (Petition p. 23). The ASMFC (2007, pp. 6–7) report does state that the NMFS Marine Recreational Fisheries Statistics Survey (MRFSS) for 2007 indicated that the recreational total catch was 139,731 American eel, which represented a large increase from the 2006 total of 85,969 American eel. However, the report goes on to state in a footnote to the catch data that the ''MRFSS Data for American Eel are unreliable. 2005 Proportional Standard Error (PSE) values for recreational harvest in Rhode Island, New Jersey, Delaware, Maryland, Virginia, and South Carolina are 98.1, 100, 96.6, 70.1, 100.5, 100, and 79.1, respectively'' (ASMFC 2007, p. 7). This means that the American eel recreational harvest data could be drastically under or over counted depending upon the potential for error.

We analyzed MRFSS information, available from 1981, as part of our 2007 12-month finding. Part of the data analysis included evaluating the reliability of the MRFSS data, especially given the margin for error noted in the ASFMC 2007 (p. 7) report. Our 2007 12-month finding stated that ''recreational harvest is either limited or nonexistent

throughout most of the range of the American eel,'' and described the source of the recreational harvest similarly to the petitioner's categories (72 FR 4967, p. 4986). The 2007 12-month finding went on to describe the low levels of recreational harvest throughout the American eel's range, the gear and catch restrictions put in place by the ASFMC member states to prevent unregulated recreational harvest, and the limited information about subsistence harvest and bycatch (72 FR 4967, p. 4987). Through our analysis, we concluded in the 2007 12-month finding that ''there are no data to suggest that subsistence harvest, bycatch, and recreational harvest are having a significant impact on American eel regionally or rangewide'' (72 FR 4967, p. 4987).

In addition to the ASMFC 2007 report, the outline of a Verreault *et al.* (2009b) report indicates that some recreational harvest information for American eels in Canada may be available. However, the recreational harvest sections of the report for glass eel, yellow eel, and silver eel all state that there are ''no data available'' (Verreault *et al.* 2009b, pp. 5, 11).

In summary, at the time the petition was received, we had only the ASMFC 2007 report, which indicates that the little recreational harvest data that are available may be unreliable, and the Verreault *et al.* 2009b report, which indicates that there are no recreational harvest data available in Canada. Therefore, because there is no new information about the potential impact of ongoing commercial harvest, and monitoring and reporting of recreational harvest continues to be limited or nonexistent throughout the range of the American eel, the conclusion from the 2007 12-month finding that commercial and recreational harvest does not impact the American eel at the panmictic population level is reasonable. We will, however, further investigate commercial and recreational harvest impacts to the American eel in our new 12-month status review.

New models for estimating abundance of fish species are being developed, but due to the global and complex life-history traits of the American eel and the difficulties inherent in simulating those traits, as well as the models' assumption limitations, no reliable model for the American eel currently exists, especially one that relies on harvest (*i.e.,* landings) data (ASMFC–AEPRT 2008, p. 2; ASMFC–AESAS 2008a, pp. 9–11; Cairns *et al.* 2008, p. 3; MacGregor *et al.* 2008, p. 4; ASFMS–AETC&SAS 2009c, p. 8). The ASMFC (2008c, pp. 1–2) listed the need for a fishery-independent sampling program for yellow and silver eels as a high priority, as this information would give a more reliable indicator of population trends.

The petitioner's assertion that the ASMFC failed to implement protective measures for American eels, including restriction or reduction of harvest levels, despite the ''declines in abundance'' (Petition, p. 23), will be addressed under Factor D below.

In summary, we find that the information provided in the petition, as well as baseline and other new information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to overutilization of the American eel for commercial, recreational, scientific, or educational purposes. There is no evidence indicating that harvest of American eels may be a threat at the population level. While new population models are becoming available, the continued reliance on landings data remains problematic in determining accurate population trends. We will, however, further investigate new information regarding overutilization of the American eel for commercial, recreational, scientific or educational purposes in our new 12-month status review.

C. Disease or Predation.

Information Provided in the Petition

The petitioner asserts that the American eel is threatened by *Anguillicola crassus,* a parasite infesting the eel's swim bladder (an internal gas-filled organ that regulates a fish's buoyancy) (Petition, pp. 23–28). The swim bladder is used by the eel for vertical migration (defined as moving at different depths in the water column) during its spawning migration (Petition, p. 25). This parasite spread from its native host, Japanese eels (*Anguilla japonica*), to both the European (*Anguilla anguilla*) and American eel through the expanding eel trade between countries and the eel aquaculture industry (Petition, p. 23). The parasite infects an eel's swim bladder and causes damage to the swim bladder, potentially affecting the eel's ability to reach the spawning ground in the Sargasso Sea (Petition, p. 25). The petitioner cites studies by Aieta and Oliveria (2009) and Sokolowski and Dove (2006) documenting the spread of *A. crassus* throughout the American eel's range (Petition, pp. 24–25). The petitioner concludes that the effects of *A. crassus,* in combination with the impacts of hydroelectric turbine mortality, contaminant accumulation, low fat stores, and commercial and recreational harvest, are causing fewer eels to reach their Sargasso Sea spawning grounds (Petition, p. 26). The petitioner also asserts that the results of experiments (Gollock *et al.* 2005) conducted on European eels showing evidence of decreased survival rate of European eels infected with *A. crassus* and exposed to hypoxic (reduced oxygen) conditions (associated with warmer than normal water temperatures) can be extrapolated to American eels (Petition, p. 26). The petitioner also asserts that eels infected with *A. crassus* that do survive the migration to the Sargasso Sea will not have the necessary fat stores to successfully reproduce because the eels may have used too much stored fat energy swimming with impaired swim bladders (Petition, p. 27). The petitioner also asserts the reduction in the number of eels reaching the spawning grounds will cause a long-term ''allee effect'' (an effect of population density on population growth, by which there is a decrease in reproductive rate at a very low population density and a positive relationship between population density and the reproduction and survival of individuals (Science-Dictionary.com 2011)) because eels will be unable to find mates (Petition, p. 28).

The petitioner did not assert that predation was a threat to the American eel.

Evaluation of Information Provided in the Petition and Available in Service Files

The Service's 2007 12-month finding discussed the latest laboratory research on the negative effects *Anguillicola crassus* infection on European eel swim capacity. Although *A. crassus* infection causes physiological damage to the swim bladder, this damage is only a concern for silver eels during outmigration when buoyancy and depth control are needed for the presumed deepwater migration to the Sargasso Sea (72 FR 4967, p. 4988). The 2007 12-month finding also discussed the implications of this reduced swim capacity to outmigration and spawning of American eel, and concluded that there may be less of a potential impact from *A. crassus* to American eel than to European eel (72 FR 4967, p. 4988). The 2007 12-month finding concluded that there was no apparent causal link between the *A. crassus* parasite in individual American eel and population-level effects, such as reduced recruitment of glass eels. However, the Service acknowledged that, because the effects of the parasite are difficult to study under natural

conditions, a level of uncertainty was inherent in our conclusion.

New information readily available to the Service since the 2007 12-month finding and prior to receipt of the petition provides, as the 12-month finding anticipated, evidence of a northerly extension of *Anguillicola crassus* distribution through New England to eastern Canada (Rockwell *et al.* 2009, p. 483). Competing hypotheses continue as to whether colder temperatures will limit the spread of this parasite (Aieta and Oliveira 2009, p. 234; Sjoberg *et al.* 2009, p. 2167) and what effect *A. crassus* infection has on the fat reserves required for successful migration (Petition, p. 26; Sjoberg *et al.* 2009, p. 2166). However, although new literature has been published since the 2007 12-month finding, some of these publications were based on research results that were considered in the 2007 12-month finding. Other new publications confirmed the presence of *A. crassus* in a previously unexamined area of the Upper Potomac River drainage of the mid-Atlantic (Zimmerman and Welsh 2008, p. 34). The Service anticipated the spread of *A. crassus* in the 2007 12-month finding. The current and anticipated impacts of *A. crassus,* thus, were previously addressed (*e.g.,* Palstra 2007a). Therefore, the new validation of the northerly invasion is not substantial information because the current and anticipated impacts of the parasite on American eel were already analyzed at the species level.

The petitioner also asserts that new research states that the eel's vertical migrations are limited by *Anguillicola crassus,* and this may affect outmigration (Sjoberg *et al.* 2009, p. 2166). Reports such as Sjoberg *et al.* (2009) and Chow *et al.* (2009), while published since the 2007 finding, merely confirm information from laboratory studies analyzed in the 12-month finding about the impacts of *A. crassus* on silver eels' buoyancy and depth control during outmigration (72 FR 4967, p. 4988). Sjoberg *et al.* (2009, pp. 2165–2166) reports it appears that more heavily infected European eels were relatively more vulnerable to recapture in pound nets; therefore, it is hypothesized by the authors that parasite-induced damage to the swim bladder inhibited vertical migrations, and infected European eels tended to migrate in shallower coastal waters, relatively close to the shore. Chow *et al.* (2009, pp. 257–258) captured two Japanese eels at depths of greater than 230 meters (m) (755 feet (ft)), confirming at least for Japanese eel what has been hypothesized for all *Anguillicola,* that migrations may occur at significant depths. The concern put forward by the petitioner is that, without a functioning swim bladder, such as those damaged by *A. crassus,* eels cannot make vertical migrations into or out of such depths. Because our 2007 12-month finding discussed the implications of *A. crassus* on the American eel, the new validation of *A. crassus* impacts is not substantial information because the current and anticipated impacts of the parasite on American eel were already analyzed at the species level.

Other new information presented by the petitioner and in the Service's files suggests that physical barriers such as dams and natural waterfalls significantly reduce *Anguillicola crassus* infection rates upstream (Machut and Limberg 2008, p. 13). In addition, recent genetic research into the population structure of *A. crassus* indicates that the parasitic infestation likely arose from long-range transfers of infected eels during eel stocking (Wielgoss *et al.* 2008, p. 3491), which raises doubts about the petitioner's assertion of *A. crassus* introduction via ballast water.

The petitioner cited research by Gollock *et al.* (2005) asserting a generalized decreased survival rate due to heightened mortality of *Anguillicola crassus* infected eels under hypoxic conditions. However, these findings applied to eels living in Lake Balaton where dissolved oxygen may decrease rapidly overnight because of the cessation of photosynthesis by phytoplankton. Given the localized nature of this research, any extrapolation of these findings to population-level effects on American eel is speculative at best.

The petitioner, citing a paper discussing extinction risk of the polar bear, suggested that the infections by *Anguillicola crassus,* together with other threats, may limit the probability of American eels finding a mate in the vast Sargasso Sea and that this ''allee effect'' will edge the species closer to extinction (Petition, p. 28). The allee effect is a concept that has been discussed in relation to the European eel, which has experienced significant recruitment failure, but because there is no evidence that significant recruitment failure may be occurring with American eel, this new assertion is speculative. Attributing effects seen in European eel to American eel (*e.g.,* effects to spawning from *A. crassus* infection) was discussed in the 2007 12-month finding. There is no new available information either provided by the petitioner or found in the Service's files that alters the cautions in that finding against untempered transfer of information specific to the European eel, to the American eel.

There was no information provided by the petitioner or new information in our files concerning the effects of predation on the American eel population. The 2007 12-month finding stated that individual American eels are sometimes predated by birds of prey and piscivorous (fish-eating) fish, but this level of predation does not impact the species rangewide (72 FR 4967, p. 4987).

In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to disease or predation. We will, however, further investigate new information regarding the population-level impacts of *A. crassus* and predation on the American eel in our new 12-month status review.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

In general, the petitioner asserts that the Service, NMFS, Federal Energy Regulatory Commission (FERC), U.S. Environmental Protection Agency (EPA), ASMFC, and Canada lack adequate regulatory mechanisms under existing authorities to protect the American eel (Petition, pp. 28–35). The petitioner cites a lack of follow-through on ASMFC's stated need for a stock assessment, the Service's and NMFS' lack of specificity in their FY 2007–2011 strategic plan and ''Our Living Oceans'' documents, respectively (Petition, p. 28). The petitioner asserts an under-reporting of the number of structures serving as barriers to American eels and lack of ''systematic effort to alleviate the threat of dams'' (Petition, p. 29), as well as a failure of existing regulatory mechanisms to address the decline of American eels (Petition, p. 32).

Specifically, the petitioner asserts there is inadequate regulation of hydroelectric power dams via implementation of legal authorities under the Federal Power Act on the part of the Service, NMFS, and FERC, and via implementation of the Clean Water Act on the part of the EPA (Petition, p. 32). The petitioner asserts these Federal agencies have failed to provide ''safe and efficient upstream and downstream passage for American eels at hydroelectric dams in the historic range of the American eel in the United States.''

The petitioner also asserts the EPA has failed to adequately regulate the disposition of ballast water under the Clean Water Act, which has led to the spread of *Anguillicola crassus.* The petitioner cites several information sources suggesting that the discharge of ballast water is a likely mechanism for the spread of *A. crassus* through intermediary hosts, as well as numerous other invasive species (Petition, p. 34). The petitioner asserts that the Service did not address ballast water disposition in the 2007 12-month finding.

The petitioner also asserts that the ASMFC has failed to limit or prohibit the harvest of American eel on the Atlantic seaboard through their legal authorities under the Magnuson-Stevens Fisheries Conservation Act despite ASMFC's statement in 2004 recommending the Service and NMFS consider protection of the American eel under the Endangered Species Act (Petition, p. 34).

Evaluation of Information Provided in the Petition and Available in Service Files

The petitioner states that the Service's Region 5 Fiscal Years (FYs) 2007–2011 Strategic Plan and NMFS' Our Living Oceans documents do little to demonstrate the agencies' ''systematic effort to alleviate the threat of dams to eels,'' and quotes information from those two documents as it pertains to the importance of habitat restoration. Because strategic plans for FYs 2007 to 2011 do not exist, we assume that the petitioner meant to cite the Northeast Region (*i.e.,* Region 5) Fisheries Program Strategic Plan for FYs 2004–2008 (Service 2004b) or FYs 2009–2011 (Service 2009). That said, strategic plans are broad-vision documents meant to provide the general framework and goals for separate stepped-down operational plans, which have the specificity that the petitioner notes the strategic plan lacks. For example, a strategic plan may recommend the need for research and modeling to determine the optimal path to achieve a specific goal. One such model is the habitat suitability index (HSI) discussed by Kocovsky *et al.* (2008), which prioritizes the temporal sequence of dam removal in the Susquehanna River based on suitable habitat conditions for target fish species, including the American eel. Because they do not prescribe any specific actions, the strategic plans do not constitute regulatory mechanisms, and are not analyzed as such. The Factor A section of the 2007 12-month finding (72 FR 4967, p. 4983) concluded the present or threatened destruction, modification, or curtailment of the American eels' habitat or range is not a significant threat to the American eel rangewide and the Factor A section of this 90-day finding above concludes there is no substantial information indicating this may be a significant threat now.

The petitioner asserts that the EPA has failed to adequately regulate the disposition of ballast water under the Clean Water Act, which has lead to the spread of *Anguillicola crassus.* The petitioner states, ''Numerous authors, as well as panelists in the 2004 FWS sponsored workshop, pointed out that ballast water of ships is the most likely mechanism for the rapid spread of the parasite from one location to another, through the dispersal of its intermediate hosts'' (Petition, p. 34). As explained above under Factor C, recent genetic research into the population structure of *A. crassus* indicates that the parasitic infestation likely arose from long-range transfers of infected eels during eel stocking (Wielgoss *et al.* 2008, p. 3491). This genetic research was completed after the 2007 12-month status review, but took into account information from the 2004 Service workshop referenced by the petitioner. In addition, Factor C in the 2007 12-month finding concluded that disease is not a significant threat to the American eel rangewide and the Factor C section of this 90-day finding above concludes there is no substantial information indicating this may be a significant threat now. Therefore, there is no substantial information on the inadequacy of existing regulatory mechanisms associated with disease.

The petitioner asserts that ASMFC failed to limit or prohibit the harvest of American eel on the Atlantic seaboard through their legal authorities under the Magnuson-Stevens Fisheries Conservation Act: ''The ASMFC has done little over the past decade effectively to reverse the declines in eel recruitment, halt commercial [fishing] and commercial take of American eels for recreational use as bait, or implement consistent methods to accurately assess their population size (ASMFC 2008; Taylor *et al.* 2008).'' The petitioner's Taylor *et al.* 2008, citation is the same document discussed below with the ASMFC–AERPT 2008 citation; however, we disagree with the conclusion the petitioner draws from this document. The ASMFC–AERPT (2008, pp. 2–5) document reaffirms the 2007 12-month finding's conclusion that using harvest data to determine abundance is problematic (p. 1); reports that all States that harvest American eel have gear or size limit restrictions in place to regulate the harvest (pp. 4–5); identifies high-priority research needs (p. 6); discusses the ASMFC Appendix II (petitioner's ASMFC 2008 citation, our ASFMC 2007 reference), which emphasizes improving upstream and downstream passage, and the decision to delay in implementing further gear and size restrictions pending the outcome of the (delayed) 2010 stock assessment (p. 7); discusses the planned Memorandum of Understanding between ASMFC and the Great Lakes Fisheries Commission to improve joint management of the American eel (p. 7); and reports that all States are in compliance with implementing the requirements of the American Eel Fisheries Management Plan (p. 8). This summary list illustrates that ASMFC is working with the States to implement conservation actions to limit eel harvests, identify current and future research priorities, and manage the eel fishery by using the available information appropriately (*i.e.,* not using harvest data to determine abundance). Therefore, we find the petitioner's assertion to be without merit. In addition, the Factor B section of the 2007 12-month finding (72 FR 4967, p. 4987) concluded that overutilization for commercial, recreational, scientific, or educational purposes is not a significant threat to the American eel rangewide, and the Factor B section of this 90-day finding above concludes there is no substantial information indicating this may be a significant threat now.

Factor D of the Service's 2007 12-month finding (72 FR 4967, pp. 4990–4991) extensively analyzed the existing regulatory mechanisms that address fish passage. The discussions of hydropower turbines in Factor E of the Service's 2007 12-month finding (72 FR 4967, p. 4991) and below in this 90-day finding acknowledge that American eels experience some mortality at hydroelectric power plant turbines. However, the 2007 12-month finding concluded that mortality of individuals, even thousands of individuals each year, while unfortunate, is not at a level that is a threat to the American eel population rangewide. The Factor E section of this 90-day finding below finds that there is not substantial information to indicate that this may be a significant threat now. The petitioner asserts that the Service, NMFS, and FERC have declined to exercise their regulatory authorities under the Federal Power Act. The petitioner did not, however, provide any information under Factor D on how these agencies have failed to exercise their regulatory authorities. As explained further in Factor E below, several studies have

recommended modifications to hydropower facilities for safer downstream eel migration (Carr and Whoriskey 2008, p. 399; Durif and Elie 2008, pp. 135–136), and some facilities already implement these modifications (Service 2007a, pp. 3–4; Eyler 2009, p. 2; Service 2009, pp 6–10; Verreault *et al.* 2009a, p. 21) with variable levels of success. Factor D of the Service's 2007 12-month finding (72 FR 4967, p. 4991) concluded that ''turbines can cause regional impacts to abundance of American eels within the watershed, but there is no evidence that turbines are affecting the species at a population level (for full discussion of turbine impacts see Factor E). Therefore we find that the regulations governing fish passage are adequate for the protection of American eel.''

We have no information in our files or provided by the petitioner on any regulatory mechanisms to address the threat of changes in oceanic conditions due to climate change discussed in Factor E below. We will, however, further investigate this in our new 12-month status review.

As discussed in Factor E below, we have no information indicating that electro-magnetic fields, acoustic disturbance, and the harvest of seaweed for biofuel are significant threats to the American eel. We will, however, further investigate these activities and regulatory mechanisms in our new 12-month status review.

In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to the inadequacy of existing regulatory mechanisms. We will, however, further investigate new information regarding existing regulatory mechanisms for the American eel in our new 12-month status review.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition

The petitioner asserts that Atlantic seaboard river systems are the ''sole migratory pathways for female American eels to gain access to their required freshwater habitat'' (Petition, p. 35). The petitioner states both upstream (discussed under Factor A) and downstream river habitat used by American eels are fully or partially blocked by numerous hydroelectric power dams and the impact of those dams (*i.e.,* turbine mortality) has a disproportionate impact on female American eels and recruitment of the species (Petition pp. 35–36, 38). The petitioner cites the Busch *et al.* (1998) paper, which states that of the 15,570 dams blocking America eel habitat in the United States, 1,100 of these dams are used for hydroelectric power. The petitioner further asserts that few of these 1,100 dams provide safe passage for migrating female American eels, which results in the death of virtually all female eels attempting to migrate. The petitioner also cites other papers that include information about dam-specific mortality rates (Petition, pp. 37–38). All of these cited papers were published prior to, and considered in, the Service's 2007 12-month finding.

The petitioner also asserts that changes in oceanic conditions resulting from global warming (*i.e.,* climate change) are contributing to the worldwide decline of eel species, including the American eel (Petition, p. 38). The petitioner asserts that changes in sea surface temperature (SST) and shifts in latitudinal isotherms (a line that connects points on a map that have the same temperature) are impacting the productivity of the eel's spawning area, changing the northern extent of the Sargasso Sea spawning area, and affecting the transportation and survival rates of leptocephali (Petition, p. 38). The petitioner, citing new research related to the European eel, asserts that this new information could also apply to the American eel. For example, citing Friedland *et al.'*s (2009) conclusion that changes in SST are impacting transportation and larval retention (amount of time the larvae stay in the current) of European eels, the petitioner asserts that, given the close proximity of the two spawning areas in the Sargasso Sea, this change in SST could also affect American eels (Petition, pp. 38–39). Citing Bonhommeau *et al.* (2008), the petitioner asserts that the authors linked global warming to eel declines via decreased productivity and recruitment. The petitioner asserts the ''worldwide recruitment decline in freshwater anguillid populations began almost simultaneously in the 1980s. While there are many factors that have contributed to this decline, recent analyses point to oceanic changes as being the more likely factor driving this trend (Bonhommeau *et al.* 2008, Friedland *et al.* 2007'' (Petition, p. 39). The petitioner also asserts that although the American eel may have been resilient to environmental changes throughout its evolutionary history, the rapid changes in the ocean environment combined with the ongoing impacts of habitat loss, hydroelectric dams, harvest, contaminants, and *Anguillicola crassus* infection, are beyond American eel's adaptability (Petition, p. 39).

The petitioner also asserts unspecified threats to the American eel from exposure to mercury, PCBs (polychlorinated biphenyls), and DDT (dichlorodiphenyltrichloroethane). The petitioner cites reports from the ASMFC (2000) and the Vermont Fish and Wildlife Department (2008) documenting the presence of these contaminants in eel samples. The petitioner also mentions elevated levels of mercury in streams from coal-burning electric power generators and acid rain causing stream acidification and fish kills (Petition, p. 40); however, the petitioner neither provides citations for this information nor explains how it demonstrates a threat to American eel.

Lastly, the petitioner asserts that electro-magnetic fields from submarine cables, acoustic disturbance from offshore wind development, and biofuel production from floating biomass (including sargassum) harvested from gyres in the open ocean are emerging threats to the American eel. Although the petitioner provided citations for the acoustic disturbance from off-shore wind development (Oham *et al.* 2007) and biomass harvesting (Markels 2009), the petitioner did not explain how any of these factors poses a threat to the American eel (Petition, p. 40).

Evaluation of Information Provided in the Petition and Available in Service Files

Hydropower

The petitioner discussed the results from a selection of citations on the effects of hydropower turbines, most of which were assessed for, but may not have been specifically cited in, the Service's 2007 12-month finding. While some of these citations may have been published after the 2007 12-month finding, the data the citations examine are either from prior to the 2007 12-month finding or merely describe an additional year of data in an ongoing study. Therefore, we conclude that this type of information in the petitioner's referenced citations offers no significant, additional value for this 90-day finding. In the Service's 2007 12-month finding, the range and rates of impacts from various turbine types to various sizes of eels (see synopsis of the Electric Power Research Institute report at 72 FR 4967, pp. 4991–4992) were thoroughly analyzed and discussed. Contrary to the assertions of the petitioner that virtually all female eels attempting to migrate are killed, the 2007 12-month finding found rates of

mortality ranging from 25 to 50 percent when one turbine is encountered during outmigration, and 40 to 60 percent when one or more turbines are encountered (72 FR 4967, p. 4992). This level of mortality, the 2007 12-month finding explains, leaves escapement values (the percent of individuals that survive to continue outmigration) of a minimum of 40 percent and a maximum of 75 percent. The 2007 12-month finding states that only 4.5 percent of the 33,663 dams on the Atlantic coast have hydropower, leaving significant areas of freshwater habitat turbine-free, and that the portion of the population that inhabits estuarine and marine waters is largely unaffected. The 2007 12-month finding concluded that, although mortality from turbines is evident and can be substantial in some cases, there is no evidence that this mortality is a significant threat to the American eel at a rangewide population level (72 FR 4967, p. 4992).

New information in the Service's files continues to support the escapement figures presented in the 2007 12-month finding. Research conducted in 2007 and 2008 on the Shenandoah River in the mid-Atlantic region showed a 47 percent survivorship of eels that migrate out of the Shenandoah River from above the Shenandoah Dam. The study also identified decreased mortality during the seasonal shutdown of the hydropower facility that was designed to protect downstream migrating eels. However, 64 percent of migrants moved downstream outside the recommended seasonal shutdown period, suggesting that additional revisions to dam operations could improve these mitigation efforts (Welsh *et al.* 2009, p. 20). Ongoing research continues to improve such mitigation efforts through improving escapement rates. Research also continues on the influence of environmental variables (such as stream flow, water temperature, and lunar phase) on downstream migration (Jansen *et al.* 2007, pp. 1442–1443; Hammond and Welsh 2009, pp. 319–320; Welsh *et al.* 2009, pp. 20–22). This work will inform turbine operations and the assessment of success rates of other mitigation measures, such as controlled spillage, diversions, and trap and transport of silver eels downstream of hazards such as turbines (McCarthy *et al.* 2008, p. 122). While the results of this research may further improve downstream passage for American eels, there is no information in our files indicating that the level of existing downstream passage may be a threat to the overall population of the American eel rangewide.

In addition to turbine mortality, several papers have documented individual eels exhibiting altered search pattern behavior when physically encountering power plant facilities (*i.e.,* bar racks, bypass structures, etc.) (Jansen *et al.* 2007, pp. 1440–1442; Carr and Whoriskey 2008, p. 397; Durif and Elie 2008, p. 208; Eltz *et al.* 2008, p. 29; Brown *et al.* 2009, p. 285; Calles *et al.* 2010, pp. 2175–2178). This search pattern behavior has delayed (hours to weeks) some eels' outmigration. As described above in the hydropower turbine section, a significant number of eels successfully migrate, and migration occurs in a normal temporal sequence. While delayed migration occurs in some individuals, there is no information in our files indicating that this may be a threat to the overall population of American eel rangewide.

Changes in Oceanic Conditions Due to Climate Change

The Service's 2007 12-month finding explored the relationship between oceanic conditions and the successful maturation and transportation of leptocephali within ocean currents from the Sargasso Sea and, therefore, recruitment of glass eels at coastal and riverine habitats. We stated that oceanic conditions, which are highly variable and cyclical, likely play a significant role in the population dynamics of the American eel (72 FR 4967, p. 4995), but at the time of the 2007 status review, the relationships between specific oceanic conditions and eel recruitment remained almost entirely hypothetical. We acknowledged that our information was scant and, therefore, turned to oceanic and eel experts to better understand the complex relationships between various oceanic conditions and eel recruitment.

The types of oceanic conditions that had the potential to affect eels in the North Atlantic, we stated, include: ''(1) changes to sea surface temperatures (SSTs); (2) changes to mixed layer depth (MLD) (the depth to which mixing is complete, relative to the layer of ocean water beneath it); (3) deflections of the Gulf Stream at the Charleston Bump, off Cape Hatteras; and (4) other changes (72 FR 4967, p. 4994).'' Changes in SSTs include inhibition of spring mixing, and nutrient recirculation and productivity, which may influence leptocephali (*i.e.,* larval) food abundance (72 FR 4967, pp. 4994–4995). We concluded that there was no indication that the American eel was suffering rangewide abundance or distributional collapse and the species was evolutionarily adapted to oceanic variations (at the time, thought to be within normal variations). Therefore, there was ''no indication that the American eel was at a reduced level where this natural oceanic variation would significantly affect the species'' and ''natural oceanic conditions were not currently, or anticipated to be in the future, a significant threat to the American eel at a population level'' (72 FR 4967, p. 4995).

Since the 2007 12-month finding, and prior to receipt of the petition, additional research has been conducted on the effects of climate change on oceanic conditions and the correlation of those changes to European and American eel recruitment. The impacts of climate change may be affecting European and American eel recruitment in three ways: (1) Shifts in spawning locations within the Sargasso Sea, (2) reduced food availability for leptocephali, and (3) shifts in where the leptocephali enter and exit the ocean currents to their continental habitats.

With regard to spawning locations, in March 2007, after the publication of the 2007 12-month finding, Friedland *et al.* (2007, pp. 1, 6) published correlative data indicating that climatic changes in the Sargasso Sea may be influencing oceanic reproduction and larval (*i.e.,* leptocephali) survival in European eels. The authors found evidence of a northern shift in the temperature front that defines the northern boundary of the European eel spawning ground within the Sargasso Sea, which ''may affect the location of spawning areas by silver eels and the survival of leptocephali during the key period when they are transported towards the Gulf Stream.'' Friedland *et al.* (2007, p. 6) stated: ''Our finding provides evidence of linkages between declines in recruitment of the European eel and specific environmental changes [thermal, wind, and mixing parameters] within the spawning and early larval development areas of eels in the Sargasso Sea.'' Their analysis went on to suggest that a number of oceanic condition parameters have changed in the Sargasso Sea and, because of the proximity of spawning areas of European and American eel, they hypothesized that American glass eel recruitment could also be affected (Friedland *et al.* 2007, pp. 7–10).

With regard to larval food availability, in 2008, Bonhommeau *et al.* (2008a, 2008b) published two papers that causally linked fluctuations in European, American, and Japanese glass eel recruitment, as measured on arrival to continental waters, to larval food availability. Larval food availability impacts the survival of larvae during their ocean migration from the Sargasso Sea to continental waters. The authors

examined the relationships between glass eel recruitment (measured at the Loire River in France for European eels and Little Egg inlet in New Jersey and Beaufort inlet in North Carolina for American eels) and marine primary production (PP) (the production of organic compounds from atmospheric or aquatic carbon dioxide) in the Sargasso Sea spawning areas. In this study, PP was used as a proxy for leptocephali food availability. Bonhommeau *et al.* (2008b) found that SST influences PP and that, specifically in the Sargasso Sea, increasing SSTs led to a decrease in PP (*i.e.,* a decrease in eel food availability). Therefore, Bonhommeau *et al.* (2008b) theorized, the warmer the Sargasso Sea, the lower the European and American eels' recruitment. Bonhommeau *et al.* (2008b, p. 75) stated that fluctuations in the Sargasso Sea SSTs followed the same trends as anomalies of temperature across the Northern Hemisphere, which suggested a direct link between global warming and the increase in SST. They concluded by suggesting that a subtle increase in temperature may have dramatic effects on leptocephali, given the length of their oceanic migration.

Also with regard to larval food availability, Miller *et al.* (2009, pp. 235–238) state that although Anguillid eel populations can likely survive wide-ranging changes in oceanic and continental climates (given that Atlantic eels (European and American eels) have survived ice ages), the current lower recruitment levels (which may be explained in part by oceanic conditions) put the European eel at risk. The authors conclude with ''If increases in temperature reduce productivity enough to affect the feeding success of leptocephali, then a continued global warming trend is an additional concern'' (p. 245).

With regard to shifts in leptocephali transport by currents, recent research results for the Japanese eel indicate that the latitudinal (north to south) location of spawning events can shift depending on oceanic conditions, and subsequently have the potential to negatively affect coastal glass eel recruitment (Tsukamoto 2009, p.1846). Citing Kettle and Haines (2006) and Friedland *et al.* (2007), Tsukamoto states that the exact spawning location of the European eel and consequently the American eel since the two species share the same spawning ground, also appears to have the potential to affect where larvae may eventually recruit as glass eels in their respective continental waters. In the Sargasso Sea, the temperature front at the northern edge of the spawning area for the American eel and the European eel appears to have been moving to the north in recent years and this may cause the silver eels to spawn slightly farther north. Shifting spawning grounds may affect where leptocephali enter and subsequently leave the ocean currents used for dispersal and may, therefore, negatively affect coastal recruitment of American eels (Tsukamoto 2009, p. 1846).

The Intergovernmental Panel on Climate Change (IPCC) 2007 synthesis report provides an ''integrated view of climate change as the final part of the IPCC's Fourth Assessment Report'' (IPCC 2007, p. 26). The synthesis report covers several topics including the observed changes in climate and effects on natural and human systems, causes (*e.g.,* anthropogenic vs. natural) of the observed changes, and projections of future climate change and related impacts under different scenarios. The IPCC defines climate change as ''a change in the state of the climate that can be identified (*e.g.,* using statistical tests) by changes in the mean and/or the variability of its properties, and that persists for an extended period, typically decades or longer. It refers to any change in climate over time, whether due to natural variability or as a result of human activity'' (IPCC 2007, p. 30).

The IPCC 2007 report unequivocally states that there is a warming of the climate system as evidenced by observed increases in global average air and ocean temperatures (p. 30), that the increase in anthropogenic greenhouse gas (GHG) concentrations are very likely the cause of increased global average temperatures since the mid-20th century (p. 39), and that ''for the next two decades a warming of about 0.2 °C per decade is projected for a range of SERS [Special Report on Emission Scenarios] emission scenarios. Even if the concentrations of GHG and aerosols had been kept constant at year 2000 levels, a further warming of about 0.1 °C per decade would be expected. Afterwards, temperature projections increasingly depend on specific emission scenarios'' (p. 45). While there is uncertainty when applying the global IPCC findings at some regional scales, the general conclusions stated above are fairly robust (IPCC 2007, pp. 72–73). This climate change information, coupled with the suggested impacts on sea conditions and coastal eel recruitment, is substantial enough to find that it may pose a significant threat to the American eel. We will fully investigate all climate change information, including any regional scale data, in our 12-month status review.

The findings stated by Bonhommeau *et al.* (2008a, 2008b), Friedland *et al.* (2007), Miller *et al.* (2009) and Tsukamoto (2009), coupled with the climate change projections indicating continued, accelerated rates of human-induced temperature increases into the future (IPCC 2007), may change our 2007 12-month finding's (72 FR 4967, p. 4995) conclusion. Specifically, these findings may change our previous conclusion that current and projected oceanic conditions are within normal variations to which the American eel is evolutionarily adapted (*i.e.,* one of the conclusions discussed in the second paragraph of this section ''Changes in Oceanic Conditions Due to Climate Change''). Therefore, we find that information provided by the petitioner and information in our files present substantial information with regard to the potential for global warming to affect the status of the American eel in the future.

Contaminants

We found the petitioner did not provide any substantive new information regarding contaminants affecting the American eel population. The Service's 2007 12-month finding discussed and analyzed the impacts of existing contaminants, new and emergent contaminants, other persistent and nonpersistent contaminants, complex mixtures of contaminants, vitamin deficiency, and combined threats such as disease, parasite infection, and contaminants on the American eel population (72 FR 4967, pp. 4992–4994). In summary, contaminants may impact individual or local populations of American eel. However, we cautioned against extrapolating preliminary laboratory studies to rangewide implications, given the lack of evidence of correlations between known contamination of specific river systems and corresponding localized declines (72 FR 4967, p. 4994). Dittman *et al.* (2009, p. 48) documented PBDE (polybrominated diphenyl ether) contaminants in some American eels, but the authors noted that these contaminants were in lower concentrations than previously discussed PCBs and had unknown effects. In addition, the Deepwater Horizon (Mississippi Canyon 252) oil well blowout and uncontrolled oil release began 10 days prior to the receipt of CESAR's petition. We have no information about the possible impacts of the oil release on American eels at a population level; however, we will evaluate any new information regarding potential impacts to the species during our status review. In summary, while

we did have information on contaminants occurring in individual eels, this is not substantive information on the effects of contaminants on the overall American eel population.

Although the petitioner asserted effects to the American eel from electro-magnetic fields, acoustic disturbance, and the harvest of seaweed for biofuel, the petitioner did not provide any data and we have no information in our files to support the claims. Therefore, we find the assertions to be speculative and not a sufficient basis to conclude that any of these may pose a significant threat to the American eel.

Summary of Factor E

We find that the information provided in the petition, as well as other new information in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted by a causal link between oceanic changes (increasing sea surface temperature with a corresponding shift in spawning location, decrease in food availability, or shift in leptocephali transport by currents, tied to global warming) and decreasing glass eel recruitment. We will further explore any current or future population level impacts that may result from climate change in our new 12-month status review. However, we find that the information provided in the petition, as well as baseline and other new information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to hydropower impacts, contaminants, electro-magnetic fields, acoustic disturbance, or the harvest of seaweed for biofuel. Information in our files and in the petition does not present new information to change the Service's previous conclusion in the 2007 12-month finding that hydropower and contaminants are not significant threats to the American eel population. We will, however, investigate any new information regarding Factor E threats that arises during the course of our new 12-month status review.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we determine that the petition presents substantial scientific or commercial information indicating that listing the American eel throughout its entire range may be warranted. This finding is based on information provided under factor E (changes in oceanic conditions due to climate change). We determine that the information provided under factors A (habitat loss, degradation or curtailment of habitat or range), B (overutilization for scientific, commercial, or educational purposes), C (disease or predation), D (inadequacy of existing regulatory mechanisms), and E (hydropower turbines, contaminants, electro-magnetic fields, acoustic disturbance, or seaweed harvesting) is not substantial.

Because we have found that the petition presents substantial information indicating that listing the American eel may be warranted, we are initiating a status review to determine whether listing the American eel 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 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 status review may provide additional information, and 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 status review 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 Northeast Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Northeast Regional Office.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 21, 2011.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–25084 Filed 9–28–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BB33

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Amendment 18

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico (Gulf) and South Atlantic Fishery Management Councils (Councils) have submitted Amendment 18 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (FMP) for review, approval, and implementation by NMFS. The amendment proposes actions to remove species from the FMP; modify the framework procedures; establish two migratory groups for cobia; and establish annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs) for king mackerel, Spanish mackerel, and cobia. In addition, Amendment 18 proposes to set allocations and establish control rules for Atlantic group cobia and revise definitions for management thresholds for Atlantic migratory groups.

DATES: Written comments must be received on or before November 28, 2011.

ADDRESSES: You may submit comments on the amendment identified by ''NOAA–NMFS–2011–0223'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* click on ''submit a comment,'' then enter ''NOAA–NMFS–2011–0223'' in the keyword search and click on ''search.'' To view posted comments during the comment period, enter ''NOAA–NMFS–2011–0223'' in the keyword search and click on ''search.'' NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of the amendment may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, or e-mail: *susan.gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The FMP being revised by this amendment was prepared by the Councils and implemented through regulations at 50 CFR parts 622 under the authority of the Magnuson-Stevens Act.

Background

The 2006 revisions to the Magnuson-Stevens Act require that by 2011, for fisheries determined by the Secretary to not be subject to overfishing, ACLs and AMs must be established at a level that prevents overfishing and helps to achieve optimum yield (OY). These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. Guidance also requires fishery management councils to establish a control rule to determine allowable biological catch (ABC).

Currently two migratory groups of king mackerel and Spanish mackerel are established; the Gulf migratory group and the Atlantic migratory group. The Gulf Council determines management measures for the Gulf migratory groups and the South Atlantic Council determines management measures for the Atlantic migratory groups.

Management Measures Contained in Amendment 18

Actions in Amendment 18 would remove four species from the FMP; modify the framework procedures; establish two migratory groups for cobia; and establish ACLs, ACTs, and AMs for each migratory group of king mackerel, Spanish mackerel, and cobia. In addition, Amendment 18 would set allocations and establish control rules for Atlantic group cobia and revise definitions for management thresholds for Atlantic migratory groups.

Removal of Species From the FMP

Species currently in the FMP include king mackerel, Spanish mackerel, cobia, cero, little tunny, dolphin, and bluefish (Gulf only). At present, only king mackerel, Spanish mackerel, and cobia have associated Federal regulatory text; the other species are in the FMP for data collection purposes only. Even though dolphin are in the Coastal Migratory Pelagic FMP, in the Atlantic they are managed under a different FMP. Amendment 18 proposes to remove cero, little tunny, dolphin, and bluefish from the Coastal Migratory Pelagic FMP. The Councils and NMFS have determined these species are not in need of Federal management at this time. If landings or effort change for any of these species and the Councils determine management at the Federal level is needed, these species could be added back into the FMP at a later date.

Cobia Migratory Groups

Although there is mixing of cobia from the Gulf and the Atlantic, scientific data indicate there are at least two separate migratory groups in the Gulf and Atlantic. Amendment 18 would establish two migratory groups for cobia with the boundary at the line of demarcation between the Gulf exclusive economic zone (EEZ) and the South Atlantic EEZ. ACLs and AMs would be established separately for each group by the responsible Council.

ABCs, ACLs, and AMs

The Councils accepted ABC control rules for Gulf migratory groups of king mackerel, Spanish mackerel, and cobia, and for the Atlantic migratory group of cobia, based on the control rule recommended by the Gulf Council's Scientific and Statistical Committee (SSC). They accepted ABC control rules for Atlantic migratory groups of king mackerel and Spanish mackerel based on the control rule recommended by the South Atlantic Council's SSC. For all species, Amendment 18 proposes ACLs equal to the ABC. For purposes of tracking the ACL for king and Spanish mackerel, landings will be evaluated based on the commercial fishing year. Recreational landings for all Atlantic species will be evaluated based on a moving multi-year average of landings, as described in the FMP.

Gulf Migratory Group King Mackerel

For Gulf migratory group king mackerel, Amendment 18 proposes separate ACLs and AMs for the commercial and recreational sectors based on sector allocations. The commercial sector would close by zone, subzone, or gear type when the commercial quota for the applicable zone, subzone, or gear type is reached or is projected to be reached. In addition, current trip limit adjustments would remain in place. For the recreational sector, the NMFS Regional Administrator would have the authority to reduce the bag and possession limit to zero if the recreational allocation (recreational ACL) is reached or projected to be reached.

Atlantic Migratory Group King Mackerel

For Atlantic migratory group king mackerel, Amendment 18 proposes separate ACLs for the commercial and recreational sectors based on sector allocations. Amendment 18 also proposes a stock ACL and an ACT for the recreational sector. The commercial sector would close when the commercial ACL is reached or projected to be reached. For the recreational sector, if the stock ACL is exceeded in any year, the bag limit would be reduced the next fishing year by the amount necessary to ensure that recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL in the following fishing year. A sector specific payback would be assessed if Atlantic migratory group king mackerel are determined to be overfished and the stock ACL is exceeded.

Gulf Migratory Group Spanish Mackerel

For Gulf migratory group Spanish mackerel, Amendment 18 proposes stock ACLs and AMs. Both the commercial and recreational sectors would close when the stock ACL is reached or projected to be reached.

Atlantic Migratory Group Spanish Mackerel

For Atlantic migratory group Spanish mackerel, Amendment 18 proposes separate ACLs for the commercial and recreational sectors based on sector allocations. Amendment 18 also proposes an ACT for the recreational sector. The commercial sector would close when the commercial quota is reached or projected to be reached. In addition, current trip limit adjustments would remain in place. For the recreational sector, if the stock ACL is exceeded in any year, the bag limit would be reduced the next fishing year by the amount necessary to ensure recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL in the following fishing year. A sector specific payback would be assessed if the Atlantic migratory group Spanish mackerel are determined to be overfished and the stock ACL is exceeded.

Gulf Migratory Group Cobia

For Gulf migratory group cobia, Amendment 18 proposes stock ACLs and AMs. A stock ACT is proposed that is 90 percent of the ACL. Both the commercial and recreational sectors would close when the stock ACT is reached or projected to be reached.

Atlantic Migratory Group Cobia

For Atlantic migratory group cobia, Amendment 18 proposes separate ACLs for the commercial and recreational sectors based on sector allocations. Because sector allocations do not currently exist for cobia, the amendment proposes an allocation of 8 percent of the ACL for the commercial sector and 92 percent of the ACL for the recreational sector, based on landings. Amendment 18 also proposes an ACT for the recreational sector.

The commercial sector would close when the commercial ACL is reached or projected to be reached. For the recreational sector, if the stock ACL is exceeded in any year, the fishing season would be reduced the following year by the amount necessary to ensure recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL in the following fishing year. A sector specific payback would be assessed if Atlantic migratory group cobia are determined to be overfished and the stock ACL is exceeded.

Modify the Current Definitions for Management Thresholds for South Atlantic Migratory Groups

Amendment 18 would revise definitions of maximum sustainable yield, OY, minimum stock size threshold and maximum fishing mortality threshold for Atlantic migratory group king mackerel, Spanish mackerel, and cobia.

Modification of Generic Framework Procedures

To facilitate timely adjustments to harvest parameters and other management measures, the Councils have added the ability to adjust ACLs and AMs, and establish and adjust target catch levels, including ACTs, to the current framework procedures. The proposed addition of other management options into the framework procedures would also add flexibility and the ability to more timely respond to certain future Council decisions through the framework procedures.

Consideration of Public Comments

A proposed rule that would implement measures outlined in Amendment 18 has been received from the Councils. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by November 28, 2011, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: September 23, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–25161 Filed 9–28–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 189

Thursday, September 29, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0040]

Florigene Pty., Ltd.; Determination of Nonregulated Status for Altered Color Roses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that two hybrid rose lines developed by Florigene Pty., Ltd., designated as IFD–524Ø1–4 and IFD–529Ø1–9, which have been genetically engineered to produce novel flower color, are no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Florigene Pty., Ltd., in its petition for a determination of nonregulated status, our analysis of available scientific data, and comments received from the public in response to our previous notice announcing the availability of the petition for nonregulated status and its associated environmental assessment and plant pest risk assessment. This notice also announces the availability of our written determination and finding of no significant impact.

DATES: *Effective Date:* September 29, 2011.

ADDRESSES: You may read the documents referenced in this notice and the comments we received 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. Those documents are also available on the Internet at *http://www.aphis.usda.gov/biotechnology/not_reg.html* and are posted with the previous notice and the comments we received on the Regulations.gov Web site at *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0040.*

FOR FURTHER INFORMATION CONTACT: Mr. Evan Chestnut, Policy Analyst, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0942, e-mail: *evan.a.chestnut@aphis.usda.gov.* To obtain copies of the documents referenced in this notice, contact Ms. Cindy Eck at (301) 734–0667, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS received a petition (APHIS Petition Number 08–315–01p) from Florigene Pty., Ltd. (Florigene) of Victoria, Australia, seeking a determination of nonregulated status for two hybrid rose lines designated as IFD–524Ø1–4 and IFD–529Ø1–9, which have been genetically engineered to produce novel flower color. The petition stated that these rose lines are unlikely to pose a plant pest risk and, therefore, should not be regulated articles under APHIS' regulations in 7 CFR part 340.

In a notice [1] published in the **Federal Register** on April 13, 2011 (76 FR 20623–20624, Docket No. APHIS-2010-0040), APHIS announced the availability of the Florigene petition, a plant pest risk assessment, and a draft environmental assessment (EA) for public comment. APHIS solicited comments on the petition, whether the subject roses are likely to pose a plant pest risk, the draft EA, and the plant pest risk assessment for 60 days ending on June 13, 2011.

APHIS received two comments during the comment period, with one commenter expressing support of the EA's preferred alternative and one commenter expressing opposition. The commenter opposing a determination of nonregulated status cited scientific concerns related to the plant pest determination. APHIS has addressed the issues raised by this commenter in an attachment to the finding of no significant impact.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the determination of nonregulated status for Florigene's rose lines IFD–524Ø1–4 and IFD–529Ø1–9, an EA has been prepared. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on our EA, the response to public comments, and other pertinent scientific data, APHIS has reached a finding of no significant impact with regard to the preferred alternative identified in the EA.

Determination

Based on APHIS' analysis of field and laboratory data submitted by Florigene, references provided in the petition,

[1] To view the notice, petition, draft EA, the plant pest risk assessment, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0040.*

peer-reviewed publications, information analyzed in the EA, the plant pest risk assessment, comments provided by the public, and information provided in APHIS' response to those public comments, APHIS has determined that Florigene's rose lines IFD–524Ø1–4 and IFD–529Ø1–9 are unlikely to pose a plant pest risk and therefore are no longer subject to our regulations governing the introduction of certain genetically engineered organisms.

Copies of the signed determination document, as well as copies of the petition, plant pest risk assessment, EA, finding of no significant impact, and response to comments are available as indicated in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this notice.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 23rd day of September 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–25090 Filed 9–28–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0130]

Syngenta Biotechnology, Inc.; Determination of Nonregulated Status for Lepidopteran-Resistant Cotton

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that a cotton line developed by Syngenta Biotechnology, Inc., designated as event COT67B, which has been genetically engineered to express a protein to protect cotton plants from lepidopteran insect damage, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Syngenta Biotechnology, Inc., in its petition for a determination of nonregulated status, our analysis of available scientific data, and comments received from the public in response to our previous notice announcing the availability of the petition for nonregulated status and its associated environmental assessment and plant pest risk assessment. This notice also announces the availability of our written determination and finding of no significant impact.

DATES: *Effective Date:* September 29, 2011.

ADDRESSES: You may read the documents referenced in this notice and the comments we received 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. Those documents are also available *on the Internet at http://www.aphis.usda.gov/biotechnology/not_reg.html* and are posted with the previous notice and the comments we received on the Regulations.gov Web site at *http://www.regulations.gov/#!docketDetail;D=APHIS-2007-0130.*

FOR FURTHER INFORMATION CONTACT: Mr. Evan Chestnut, Policy Analyst, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0942, e-mail: *evan.a.chestnut@aphis.usda.gov.* To obtain copies of the documents referenced in this notice, contact Ms. Cindy Eck at (301) 734–0667, e-mail: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS received a petition (APHIS Petition Number 07–108–01p) from Syngenta Biotechnology, Inc. (Syngenta), seeking a determination of nonregulated status for cotton (*Gossypium* spp.) designated as event COT67B, which has been genetically engineered to express a Cry1Ab protein to protect cotton plants from lepidopteran insect damage. The petition stated that cotton event COT67B is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

In a notice [1] published in the **Federal Register** on May 11, 2011 (76 FR 27301–27303, Docket No. APHIS–2007–0130), APHIS announced the availability of the Syngenta petition, our plant pest risk assessment, and our draft environmental assessment (EA) for public comment. APHIS solicited comments on the petition, whether the subject cotton is likely to pose a plant pest risk, and on the draft EA for 60 days ending on July 11, 2011.

APHIS received 7 comments opposing a determination of nonregulated status during the comment period, with one comment having an additional 4,045 names attached. Commenters generally expressed opposition to genetically engineered organisms or crops but did not provide any specific disagreement with APHIS' analysis. One commenter expressed concern with gene flow. APHIS has addressed the issues raised during the comment period and has provided responses to these comments as an attachment to the finding of no significant impact.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the determination of nonregulated status for Syngenta's cotton event COT67B, an EA has been prepared. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on our EA, the response to public comments, and other pertinent scientific data, APHIS has reached a finding of no significant impact with

[1] To view the notice, petition, draft EA, the plant pest risk assessment, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2007-0130.*

regard to the preferred alternative identified in the EA.

Determination

Based on APHIS' analysis of field and laboratory data submitted by Syngenta, references provided in the petition, peer-reviewed publications, information analyzed in the EA, the plant pest risk assessment, comments provided by the public, and information provided in APHIS' response to those public comments, APHIS has determined that Syngenta's cotton event COT67B is unlikely to pose a plant pest risk and therefore is no longer subject to our regulations governing the introduction of certain genetically engineered organisms.

Copies of the signed determination document, as well as copies of the petition, plant pest risk assessment, EA, finding of no significant impact, and response to comments are available as indicated in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this notice.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 23rd day of September 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–25086 Filed 9–28–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0077]

Notice of Availability of a Pest Risk Analysis for the Importation of Fresh Tejocote Fruit From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation into the continental United States of fresh tejocote fruit from Mexico. Based on this analysis, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh tejocote fruit from Mexico. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before November 28, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0077–0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0077, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0077* 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.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Import Specialist, RPM, PHP, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–51, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest-risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section.

APHIS received a request from the national plant protection organization (NPPO) of Mexico to allow the importation of fresh tejocote fruit (*Crataegus pubescens*) from Mexico into the continental United States. Currently, fresh tejocote fruit is not authorized for entry from Mexico. We have completed a pest risk analysis for the purpose of evaluating the pest risks associated with the importation of fresh tejocote fruit into the continental United States. The analysis consists of a pest list identifying pests of quarantine significance that are present in Mexico and could follow the pathway of importation into the United States and a risk management document identifying phytosanitary measures that could be applied to the commodity to mitigate the pest risk.

We have concluded that fresh tejocote fruit can be safely imported into the continental United States from Mexico using one or more of the five designated phytosanitary measures listed in § 319.56–4(b). The measures we selected are:

- Fresh tejocote fruit may be imported into the continental United States in commercial consignments only.
- Each consignment of fresh tejocote fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Mexico stating that the fresh tejocote fruit in the consignment has been inspected and is free of pests.
- Each shipment of fresh tejocote fruit is subject to inspection upon arrival at port of entry to the United States.

Therefore, in accordance with § 319.56–4(c), we are announcing the availability of our pest risk analysis for public review and comment. The pest risk analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the pest risk analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the pest risk analysis you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of fresh tejocote fruit from Mexico in a subsequent notice. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will begin issuing permits for the importation of fresh tejocote fruit from Mexico into the continental United States subject to the requirements specified in the risk management document.

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.

Done in Washington, DC, this 23rd day of September 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–25087 Filed 9–28–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0087]

Notice of Availability of a Pest Risk Analysis for the Importation of Pomegranate From India Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation into the continental United States of fresh pomegranate fruit from India. Based on that analysis, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh pomegranate fruit from India. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before November 28, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0087-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0087, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0087* 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) 6902817 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, RPM, PHP, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–51, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section.

APHIS received a request from the Government of India to allow the importation of fresh pomegranate fruit (*Punica granatum* L.) from India into the continental United States. Currently, fresh pomegranate fruit is not authorized for entry from India. We have completed a pest risk analysis for the purpose of evaluating the pest risks associated with the importation of fresh pomegranate fruit into the continental United States. The analysis consists of a pest list identifying pests of quarantine significance that are present in India and could follow the pathway of importation into the United States and a risk management document identifying phytosanitary measures that could be applied to the commodity to mitigate the pest risk.

We have concluded that fresh pomegranate fruit can be safely imported into the continental United States from India using one or more of the five designated phytosanitary measures listed in § 319.56–4(b). The requirements for shipments of fresh pomegranate fruit from India would be as follows:

- The fresh pomegranate fruit may be imported into the continental United States in commercial consignments only;
- The fresh pomegranate fruit must be irradiated in accordance with 7 CFR part 305 with a minimum absorbed dose of 400 Gy;
- If the irradiation treatment is applied outside the United States, each consignment of fresh pomegranate fruit must be jointly inspected by APHIS and the national plant protection organization (NPPO) of India and accompanied by a phytosanitary certificate attesting that the fruit received the required irradiation treatment and was inspected and found free of the mite *Tenuipalpus granati,* the false spider mite (*Tenuipalpus punicae*), and the bacterium *Xanthomonas axonopodis* pv. *Punicae;*
- If irradiation is applied upon arrival in the United States, each consignment of fresh pomegranate fruit must be inspected by the NPPO of India prior to departure and accompanied by a phytosanitary certificate with an additional declaration that the fruit was inspected and found free of the mite *Tenuipalpus granati,* the false spider mite (*Tenuipalpus punicae*), and the bacterium *Xanthomonas axonopodis* pv. *Punicae;* and
- The fresh pomegranate fruit is subject to inspection upon arrival at the U.S. port of entry.

Therefore, in accordance with § 319.56–4(c), we are announcing the availability of our pest risk analysis for public review and comment. The pest risk analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the pest risk analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the pest risk analysis you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of fresh pomegranate fruit from India in a subsequent notice. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will authorize the importation of fresh pomegranate fruit from India into the continental United States subject to the requirements specified in the risk management document.

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.

Done in Washington, DC, this 23rd day of September 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–25085 Filed 9–28–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Questa Ranger District, Carson National Forest; Taos County, NM; Taos Ski Valley's 2010 Master Development Plan—Phase 1 Projects; Additional Filings

AGENCY: Forest Service, USDA.

ACTION: Notice; correction.

SUMMARY: The USDA Forest Service published in the **Federal Register** a Notice of Intent (75 FR 71414–71415, November 23, 2010) to prepare an environmental impact statement for a proposal to authorize several (Phase 1) projects included in the Taos Ski Valley (TSV) 2010 Master Development Plan (MDP). The proposed projects include: Adding new lifts to serve terrain that is currently only accessible by hiking; replacing old lifts; creating new gladed terrain; improving traffic circulation throughout the day parking lots and a new drop-off area; constructing the Taos Adventure Center (snowtubing and snowshoeing trails); and developing a lift-served mountain biking trail. All proposed projects are within the existing special use permit (SUP) area.

Modification of the Proposed Action: The original proposed action submitted for public review included a proposal to develop the Taos Adventure Center, in the northwest portion of the SUP area. The center would have included snowtubing and snowshoeing trails and associated facilities. Upon further analysis, the Forest Service has modified the proposed action and proposes to develop the snowtubing trails where Chair 3 (Beginner Lift) and Strawberry Hill are currently located. The modified proposed action would: (1) Reduce the potential impacts to wildlife habitat and wetlands; (2) eliminate impacts to approximately 3.7 acres of a previously undisturbed area; (3) decrease the distance of the facility from the base area, which is the hub of activities; and (4) eliminate the need to construct a warming hut (yurt), restroom facilities, a foot bridge across the Rio Hondo, and snowmaking lines. The proposed snowtubing area would be located on both National Forest System lands and private land owned by TSV. The snowshoeing trails remain as originally proposed.

In addition, the Forest Service proposes to authorize under a separate SUP to John Cottam, the relocation of the Alpine Village pedestrian bridge. If the decision is to authorize a new skier drop-off area under TSV's SUP, the bridge would be simultaneously relocated and the Cottam SUP would be amended.

Corrected Dates: After publication of the original Notice of Intent, a letter soliciting comments on the proposed action and purpose and need was issued to the public in December 2010. Comments concerning the scope of the analysis were received in January and February 2011. The draft environmental impact statement (draft EIS) is expected to be available for public review in December 2011 and the final environmental impact statement (final EIS) and record of decision (ROD) are expected in May 2012.

ADDRESSES: Send written comments to Carson National Forest, Taos Ski Valley MDP—Phase 1 Projects, 208 Cruz Alta Road, Taos, NM 87571. Comments may also be sent via e-mail to *comments-southwestern-carson@fs.fed.us* or facsimile to (575) 758–6213.

FOR FURTHER INFORMATION CONTACT: Additional information related to the proposed project can be obtained from the Forest's Web page at: *http://www.fs.fed.us/r3/carson/.* The Forest Service contact is Audrey Kuykendall, who can be reached at 575–758–6200.

Dated: September 22, 2011.

Kendall Clark,

Carson National Forest Supervisor.

[FR Doc. 2011–25011 Filed 9–28–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2012 Economic Census of Puerto Rico, the U.S. Virgin Islands, Guam, Commonwealth of the Northern Mariana Islands, and American Samoa—Collectively Referred to as Island Areas.

OMB Control Number: 0607–0937.

Form Number(s): IA–97120, IA–97220, IA–97123, IA–97223, IA–97130, IA–97230, IA–97142, IA–97242, IA–97144, IA–97244, IA–97152, IA–97252, IA–97172, IA–97272, IA–97180, IA–97280, IA–97190, IA–97290, IA–98163, IA–98173, IA–98183, IA–98193.

Type of Request: Reinstatement, with change, of an expired collection.

Burden Hours: 56,825.

Number of Respondents: 59,100.

Average Hours per Response: 58 minutes.

Needs and Uses: The 2012 Economic Census of Island Areas, which includes Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa, is part of the 2012 Economic Census.

The 2012 Economic Census of Island Areas will cover the following sectors (as defined by the North American Industry Classification System (NAICS)): Mining, Utilities, Construction, Manufacturing; Wholesale and Retail Trades, Transportation and Warehousing, Information; Finance and Insurance; Real Estate and Rental and Leasing; Professional, Scientific, and Technical Services; Management of Companies and Enterprises; Administrative and Support, Waste Management and Remediation Services; Educational Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; Accommodation and Food Services; and Other Services (except Public Administration). This scope is equivalent to that of the stateside economic census.

The economic census provides the only source for dependable, comparable data for the island areas at a geographic level consistent with U.S. counties. The 2012 Economic Census of Island Areas is particularly important because of the rapid and varied changes taking place in the economies of these areas.

The economic census is the primary source of dependable facts about the structure and functioning of the economies of each Island Area, and it features the only recognized source of data at a geographic level equivalent to U.S. counties. Economic census statistics serve as part of the framework for the national accounts of the Island Areas and provide essential information for government (Federal and local), business, and the general public. The governments of the Island Areas and the Bureau of Economic Analysis (BEA) rely on the economic census as an important part of the framework for their income and product accounts, input-output tables, economic indexes, and other composite measures that serve as the factual basis for economic policy-making, planning, and program administration. Further, the census provides benchmarks for surveys of business which track short-term economic trends, serve as economic indicators, and contribute critical source data for current estimates of the gross product of the Island Areas. In addition, industry, business, academia, and the general public use information from the economic census for evaluating markets,

preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.

If the economic census were not conducted in the Island Areas, the Federal government would lose the only dependable source of detailed comprehensive information of the economies of these areas. Additionally, the governments of the Island Areas would lose vital source data and benchmarks for their national accounts, input-output tables, and other composite measures of economic activity, causing a substantial degradation in the quality of these important statistics.

Affected Public: Business or other for-profit.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 131 and 224.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the *Internet at dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: September 23, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–24999 Filed 9–28–11; 8:45 am]

BILLING CODE 3510–07–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

[8/25/2011 through 9/21/2011]

Firm name	Address	Date accepted for Investigation	Products
B&G Seafood, Inc.	17358 Hwy. 631, Des Allemands, LA 70030.	9/20/2011	The firm processes seafood.
CSE Automation, LLC	7826 Centech Road, Omaha, NE 68138.	9/19/2011	The firm designs and manufactures equipment used to manufacture wood cabinets, furniture and windows.
Debond Corporation DBA Flexpak Corporation.	3720 West Washington Street, Phoenix, AZ 85009.	9/9/2011	The firm supplies custom thermoforming and contract, medial and food packaging solutions.
EuroPlast, Ltd.	100 S. Industrial Lane, Endeavor, WI 53930.	9/9/2011	The firm manufactures plastic valves/enclosures, plastic bins, totes for electrical metering, and internal security components for locking devices.
Greg Arceneaux Cabinetmakers, Inc.	703 W. 26th Ave., Covington, LA 70433.	9/6/2011	The firm manufactures custom cabinetry and millwork.
Oakridge Seafood, LLC	3408 E. Old Spanish Trail, New Iberia, LA 70560.	9/12/2011	The firm processes seafood.
R. S. Owens & Company	5535 N. Lynch Avenue, Chicago, IL 60630.	9/9/2011	The firm designs, manufactures, and assembles awards, trophies, recognition items and promotional products.

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: September 21, 2011.

Bryan Borlik,

Director, Trade Adjustment Assistance for Firms Program.

[FR Doc. 2011–25022 Filed 9–28–11; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Bahram Maghazehe, a.k.a. Benjamin Maghazehe, a.k.a. Ben Maghazehe, 154 Sequoia Drive, Newtown, PA 18940, Respondent; Order Relating to Bahram Maghazehe a.k.a. Benjamin Maghazehe a.k.a. Ben Maghazehe

The Bureau of Industry and Security, U.S. Department of Commerce (''BIS''),

has notified Bahram Maghazehe a.k.a. Benjamin Maghazehe a.k.a. Ben Maghazehe (''Maghazehe'') of its intention to initiate an administrative proceeding against Maghazehe pursuant to Section 766.3 of the Export Administration Regulations (the ''Regulations''),[1] and Section 13(c) of the Export Administration Act of 1979, as amended (the ''Act''),[2] through the issuance of a Proposed Charging Letter to Maghazehe that alleged that he committed one violation of the Regulations. Specifically, the charge is:

Charge 1 15 CFR 764.2(h)—Evasion

Beginning in or about February 2007 and continuing through in or about June 2007, Maghazehe engaged in a transaction or took other action with intent to evade the provisions of the Regulations.

Specifically, Maghazehe worked with a U.S. company to arrange for the export without a license from the United States through the United Arab Emirates to Iran of a Varian Ximatron oncology system, which was subject to the Regulations,[3] and the Iranian Transactions Regulations (''ITR'')[4] and had a declared value of $5,000. Pursuant to Section 560.204 of the Iranian Transactions Regulations (''ITR'') maintained by the Department of the Treasury's Office of Foreign Assets Control (''OFAC''), an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the ITR without authorization from OFAC. No OFAC authorization was sought or obtained for the transaction described herein.

Maghazehe had knowledge that a U.S. hospital was discarding the oncology system and that a company in Iran with which he had a business relationship wanted to acquire the equipment. To enable the delivery of the oncology system to the Iranian company, Maghazehe worked with a U.S. company to arrange for the de-installation and removal of the equipment from the U.S. hospital and the export of the equipment from the United States. Maghazehe informed the U.S. company that the oncology system was destined for Iran, and, on or about June 7, 2007, when asked by the U.S. company's representative if he wanted to make a ''legal export,'' indicated by shaking his head no that he did not want to do so. Maghazehe provided the U.S. company with a United Arab Emirates address, which he intended for the U.S. company to provide to the freight forwarder and for the freight forwarder to provide to the U.S. Government as the ultimate destination of the item, thereby obscuring the actual final destination of the equipment, Iran. These acts were taken to export the U.S.-origin equipment to Iran without the required U.S. Government authorization and avoid detection by law enforcement. Ultimately, the equipment was seized by the U.S. Government.

In so doing, Maghazehe committed one violation of Section 764.2(h) of the Regulations.

Whereas, BIS and Maghazehe have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

Whereas, I have approved of the terms of such Settlement Agreement;

It Is Therefore Ordered:

FIRST, that for a period of six (6) years from the date of entry of the Order, Bahram Maghazehe a.k.a. Benjamin Maghazehe a.k.a. Ben Maghazehe, with a last known address of 154 Sequoia Drive, Newtown, Pennsylvania 18940, and when acting for or on his behalf, his representatives, assigns, agents, or employees (hereinafter collectively referred to as ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2011). The charged violation occurred in 2007. The Regulations governing the violations at issue are found in the 2007 version of the Code of Federal Regulations (15 CFR parts 730–774 (2007)). The 2011 Regulations set forth the procedures that apply to this matter.

[2] 50 U.S.C. app. 2401–2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2011 (76 FR 50,661 (Aug. 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*).

[3] The item is designated as EAR99, which is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 CFR 734.3(c) (2007).

[4] 31 CFR part 560 (2007).

may also be made subject to the provisions of the Order.

Fourth, that the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

Fifth, that this Order shall be served on Maghazehe and on BIS, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Issued this 22nd day of September, 2011.

Donald G. Salo, Jr.,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2011–24997 Filed 9–28–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA738

Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT); Fall Meeting

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

ACTION: Notice of public meeting.

SUMMARY: In preparation for the 2011 International Commission for the Conservation of Atlantic Tunas (ICCAT) meeting, the Advisory Committee to the U.S. Section to ICCAT is announcing the convening of its fall meeting.

DATES: The meeting will be held October 13–14, 2011. There will be an open session on Thursday, October 13, 2011, from 9 a.m. through approximately 1:30 p.m. The remainder of the meeting will be closed to the public and is expected to end by 5 p.m. on October 14. Oral comments can be presented during the public comment session on October 13, 2011.

Written comments on issues being considered at the meeting will be made available to the Advisory Committee, and should be received no later than October 7, 2011 (see **ADDRESSES**).

ADDRESSES: The meeting will be held at the Hilton Washington DC/Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910. Written comments should be sent to Rachel O'Malley at NOAA Fisheries, Office of International Affairs, Room 12641, 1315 East-West Highway, Silver Spring, MD 20910. Written comments can also be provided via fax (301–713–2313) or e-mail (*Rachel.O'Malley@noaa.gov*).

FOR FURTHER INFORMATION CONTACT: Rachel O'Malley, Office of International Affairs, 301–427–8373.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet October 13–14, 2011, first in an open session to consider management- and research-related information on stock status of Atlantic highly migratory species and then in a closed session to discuss sensitive matters. There will be an opportunity for oral public comment during the October 13, 2011, open session. The open session will be from 9 a.m. through 1:30 p.m. The public comment portion of the meeting is scheduled to begin at approximately 1 p.m. but could begin earlier depending on the progress of discussions. Written comments may also be submitted for the October open session by mail, fax or e-mail and should be received by October 7, 2011 (see **ADDRESSES**).

NMFS expects members of the public to conduct themselves appropriately at the open session of the meeting. At the beginning of the public comment session, an explanation of the ground rules will be provided (e.g., alcohol in the meeting room is prohibited, speakers will be called to give their comments in the order in which they registered to speak, each speaker will have an equal amount of time to speak and speakers should not interrupt one another). The session will be structured so that all attending members of the public are able to comment, if they so choose, regardless of the degree of controversy of the subject(s). Those not respecting the ground rules will be asked to leave the meeting.

After the open session, the Advisory Committee will meet in closed session to discuss sensitive information relating to upcoming international negotiations regarding the conservation and management of Atlantic highly migratory species.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rachel O'Malley at (301) 427–8373 or *Rachel.O'Malley@noaa.gov* at least 5 days prior to the meeting date.

Dated: September 26, 2011.

Rebecca J. Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2011–25163 Filed 9–28–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent and Trademark Financial Transactions.

Form Number(s): PTO–2038, PTO–2231, PTO–2232, PTO–2233, PTO–2234, PTO–2236.

Agency Approval Number: 0651–0043.

Type of Request: Revision of a currently approved collection.

Burden: 55,901 hours annually.

Number of Respondents: 1,849,771 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take the public approximately two to six minutes (0.03 to 0.10 hours) to gather the necessary information, prepare the appropriate form or document, and submit the items in this collection to the USPTO.

Needs and Uses: Under 35 U.S.C. 41 and 15 U.S.C. 1113, as implemented in 37 CFR 1.16–1.28, 2.6–2.7, and 2.206–2.209, the USPTO charges fees for processing and other services related to patents, trademarks, and information products. Customers may submit payments to the USPTO by several methods, including credit card, deposit account, electronic funds transfer (EFT), and paper check transactions. The public uses this collection to pay patent and trademark fees by credit card, establish and manage USPTO deposit accounts, request refunds, and set up user profiles. The USPTO uses this collection to process credit card payments, handle deposit account requests, issue refunds, and provide user accounts for EFT and other financial transactions.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, *e-mail:* *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

• *E-mail: InformationCollection@uspto.gov.* Include ''0651–0043 copy request'' in the subject line of the message.

• *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before October 31, 2011 to Nicholas A. Fraser, OMB Desk Officer, via e-mail to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: September 23, 2011.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2011–24996 Filed 9–28–11; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting Notice

The White House Council for Community Solutions Gives Notice of Their Following Meeting

DATE AND TIME: Friday, October 14, 2011, 9 a.m.–12:30 p.m. Eastern Daylight Time.

PLACE: The Council will meet in the Eisenhower Executive Office Building. This meeting will be streamed live for public viewing and a link will be available on the council's Web site: *http://www.serve.gov/communitysolutions.*

PUBLIC COMMENT: The public is invited to submit publicly available comments through the Council's Web site. To send statements to the Council, please send written statements to the Council's electronic mailbox at *WhiteHouseCouncil@cns.gov.* The public can also follow the Council's work by visiting its Web site: *http://www.serve.gov/communitysolutions.*

STATUS: Open.

MATTERS TO BE CONSIDERED: The purpose of this meeting is to review what the Council has learned through its outreach and other efforts about the following: (1) Effective cross-sector collaborative initiatives and what makes them best practices, and (2) issues facing young Americans who are neither in school nor in the workplace and promising solutions to address this challenge.

CONTACT PERSON FOR MORE INFORMATION: Leslie Boissiere, Executive Director, White House Council for Community Solutions, Corporation for National and Community Service, 10th Floor, Room 10911, 1201 New York Avenue, NW., Washington, DC 20525. Phone (202) 606–3910. Fax (202) 606–3464. *E-mail: lboissiere@cns.gov.*

Dated: September 26, 2011.

Leslie Boissiere,

Executive Director.

[FR Doc. 2011–25151 Filed 9–26–11; 4:15 pm]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 10–71]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 10–71 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 23, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

SEP 14 2011

The Honorable John A. Boehner
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-71, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Bahrain for defense articles and services estimated to cost $53 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided under Separate Cover)



BILLING CODE 5001–06–C

Transmittal No. 10–71

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Bahrain.

(ii) *Total Estimated Value:*

Major Defense Equipment*	$38 million.
Other	15 million.
Total	53 million.

*as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 44 M1152A1B2 Armored High Mobility Multi-Purpose Wheeled Vehicles (HMMWVs), 200 BGM–71E–4B–RF Radio Frequency (RF) Tube-Launched Optically-Tracked Wire-Guided Missiles (TOW–2A), 7 Fly-to-Buy RF TOW–2A Missiles, 40 BGM–71F–3–RF TOW–2B Aero Missiles, 7 Fly-to-Buy RF TOW–2B Aero Missiles, 50 BGM–71H–1RF Bunker Buster Missiles (TOW–2A), 7 Fly-to-Buy RF Bunker Buster Missiles (TOW–2A), 48 TOW–2 Launchers, AN/UAS–12A Night Sight Sets, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support.

(iv) *Military Department:* Army (UJT).

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(viii) *Date Report Delivered to Congress:* 14 Sep 2011.

Policy Justification

Bahrain—M1152A1B2 HMMVs and TOW–2A and TOW–2B Missiles

The Government of Bahrain has requested a possible sale of 44 M1152A1B2 Armored High Mobility Multi-Purpose Wheeled Vehicles (HMMWVs), 200 BGM–71E–4B–RF Radio Frequency (RF) Tube-Launched Optically-Tracked Wire-Guided Missiles (TOW–2A), 7 Fly-to-Buy RF TOW–2A Missiles, 40 BGM–71F–3–RF TOW–2B Aero Missiles, 7 Fly-to-Buy RF TOW–2B Aero Missiles, 50 BGM–71H–1RF Bunker Buster Missiles (TOW–2A), 7 Fly-to-Buy RF Bunker Buster Missiles (TOW–2A), 48 TOW–2 Launchers, AN/UAS–12A Night Sight Sets, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support. The estimated cost is $53 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a major non-NATO ally that has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale will improve Bahrain's capability to meet current and future armored threats. Bahrain will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be AM General in South Bend, Indiana, and Raytheon Missile Systems Corporation in Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Bahrain.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10–71

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Radio Frequency (RF) TOW 2A Missile (BGM–71E–4B–RF) is a direct attack missile designed to defeat armored vehicles, reinforced urban structures, field fortifications and other such targets. TOW missiles are fired from a variety of TOW launchers. The TOW 2A missile (both wire & RF) contains two tracker beacons (xenon and thermal) for the launcher to track and guide the missile in flight. Guidance commands from the launcher are provided to the missile by an RF link contained within the missile case. The hardware, software, and technical publications provided with the sale are Unclassified. However, the system itself contains sensitive technology that instructs the system on how to operate in the presence of countermeasures.

2. The Radio Frequency (RF) TOW 2B Aero Missile (BGM–71F–3–RF) is a direct attack missile designed to defeat armored vehicles, reinforced urban structures, field fortifications, and other such targets. The TOW 2B features a dual-mode sensor and an armament section equipped with two warheads different from those used in other TOW versions. The TOW 2B is designed to fly over the top of a tank, where it is less heavily armored, and destroy it from above by simultaneously detonating the missile's two explosively formed penetrator warheads downward. The fly-over shoot-down flight profile permits the attack of targets in defilade, protected by berms or other fortifications. The extended range of the TOW 2B Aero was accomplished with minor modifications to the TOW 2B. The new aerodynamic feature ensures stable controllable flight to 4.5 kilometers while using the current propulsion system. The TOW 2B Aero, with its longer range and faster time to target, increases battle space and allows commanders the ability to better shape the battlefield.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2011–25014 Filed 9–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 10–74]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 10–74 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 23, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

SEP 15 2011

The Honorable John A. Boehner
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-74, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the Kingdom of Saudi Arabia for defense articles and services estimated to cost $886 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 10–74

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1)of the Arms Export Control Act

(i) *Prospective Purchaser:* Kingdom of Saudi Arabia

(ii) *Total Estimated Value:*

Major Defense Equipment* ...	$342 million
Other	544 million
Total	886 million

* as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 36 M777A2 Howitzers, 54 M119A2 Howitzers, 6 AN/TPQ–36(V) Fire Finder Radar Systems, 24 Advanced Field Artillery Tactical Data Systems (AFATDS), 17,136 rounds M107 155mm High Explosive (HE) ammunition, 2,304 rounds M549 155mm Rocket Assisted Projectiles (RAPs), 60 M1165A1 High Mobility Multipurpose Vehicles (HMMWVs), 120 M1151A1 HMMWVs, 252 M1152A1 HMMWVs, Export Single Channel Ground And Airborne Radio Systems (SINCGARS), electronic support systems, 105mm ammunition, various wheeled/tracked support vehicles, spare and repair parts, technical manuals and publications, translation services, training, USG and contractor technical assistance, and other related elements of logistical and program support.

(iv) *Military Department:* Army (VUI, VUJ, VUO, VUP, VUQ)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 15 Sep 2011

POLICY JUSTIFICATION

Kingdom of Saudi Arabia—Howitzers, Radars, HMMWVs, Ammunition, and Related Support

The Government of the Kingdom of Saudi Arabia has requested a possible sale for 36 M777A2 Howitzers, 54 M119A2 Howitzers, 6 AN/TPQ–36(V) Fire Finder Radar Systems, 24 Advanced Field Artillery Tactical Data Systems (AFATDS), 17,136 rounds M107 155mm High Explosive (HE) ammunition, 2,304 rounds M549 155mm Rocket Assisted Projectiles (RAPs), 60 M1165A1 High Mobility Multipurpose Vehicles (HMMWVs), 120 M1151A1 HMMWVs, 252 M1152A1 HMMWVs, Export Single Channel Ground And Airborne Radio Systems (SINCGARS), electronic support systems, 105mm ammunition, various wheeled/tracked support vehicles, spare and repair parts, technical manuals and publications, translation services, training, USG and contractor technical assistance, and other related elements of logistical and program support. The estimated cost is $886 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale will augment the Kingdom of Saudi Arabia's existing light artillery capabilities. The Kingdom of Saudi Arabia will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense. The Kingdom of Saudi Arabia, which already has 155mm and 105mm howitzers and support vehicles and equipment in its inventory, will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment will not alter the basic military balance in the region.

The prime contractors will be AM General, LLC in South Bend, IN, BAE Systems in the United Kingdom & Hattiesburg, MS, ITT Defense and Information Solutions in McLean, VA, Thales Raytheon Systems in Fullerton CA, Smith Detection in Edgewood, MD, SRCTec, in Syracuse, NY, Northrop Grumman Corporation in Apopka, FL, and General Dynamics C4 Systems in Taunton, MA. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any U.S. Government or contractor representatives to the Kingdom of Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2011–25015 Filed 9–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–19]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 11–19 with attached transmittal and policy justification.

Dated: September 23, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

SEP 2 1 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-19, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $500 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification



BILLING CODE 5001–06–C

Transmittal No. 11–19

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) *Prospective Purchaser:* Taipei Economic and Cultural Representative Office in the United States pursuant to P.L. 96–8

(ii) *Total Estimated Value:*

Major Defense Equipment *	$0 million.
Other	500 million.
Total	500 million.

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* continuation of a pilot training program and logistics support for F–16 aircraft at Luke Air Force Base, Arizona to include flight training, supply and maintenance support, spare and repair parts, support equipment, program management, publications, documentation, personnel training and training equipment, fuel and fueling services, and other related program requirements necessary to

sustain a long-term CONUS training program.

(iv) *Military Department:* Air Force (NHE).

(v) *Prior Related Cases, if any:* FMS Case NHA–$ 84 million–18Dec92. FMS Case NHC–$261 million–01Jul99. FMS Case NHD–$280 million–29Nov07.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None.

(viii) *Date Report Delivered to Congress:* 21 Sep 2011.

Policy Justification

Taipei Economic and Cultural Representative Office in the United States—Pilot Training Program

The Taipei Economic and Cultural Representative Office in the United States has requested a possible sale for the continuation of a pilot training program and logistics support for F–16 aircraft at Luke Air Force Base, Arizona to include flight training, supply and maintenance support, spare and repair parts, support equipment, program management, publications, documentation, personnel training and training equipment, fuel and fueling services, and other related program requirements necessary to sustain a long-term CONUS training program. The estimated cost is $500 million.

This sale is consistent with United States policy and Public Law 96–8.

The recipient is one of the major political and economic powers in Asia and the Western Pacific and a key partner of the United States in ensuring peace and stability in that region. It is vital to the U.S. national interest to assist the recipient in developing and maintaining a strong and ready self-defense capability, which will contribute to an acceptable military balance in the area. This proposed sale is consistent with those objectives.

The recipient and the U.S. Air Force (USAF) will have the opportunity to fly together, which will support disaster relief missions, non-combatant evacuation operations, and other contingency situations. These services and equipment are used in the continuing pilot training program at Luke Air Force Base, Arizona. This program enables the recipient to develop mission ready and experienced pilots through CONUS training. The training provides a ''capstone'' course that takes experienced pilots and significantly improves their tactical proficiency. Training is a key component of combat effectiveness, and recipient pilots who have graduated from the existing program have performed brilliantly.

The proposed sale of pilot training and support will not alter the basic military balance in the region.

Implementation of this sale will not require the assignment of any U.S. Government or contractor representatives to the recipient. The USAF will provide instruction, flight operations, and maintenance support and facilities. Approximately 90 U.S. contractors will provide aircraft maintenance and logistics support for the F–16 aircraft at Luke Air Force Base, Arizona.

The prime contractor for the logistics support will be L–3 Communications Corporation in Greenville, Texas. There are no known offset agreements proposed in connection with this potential sale.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2011–25017 Filed 9–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–27]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 11–27 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 23, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

SEP 21 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-27, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the United Arab Emirates for major defense equipment estimated to cost $65 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 11–27

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended (U)

(i) *Prospective Purchaser:* United Arab Emirates.

(ii) *Total Estimated Value:*

Major Defense Equipment *	$65 million
Other	0
Total	65 million

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 500 AGM–114R3 HELLFIRE II missiles, containers, spare and repair parts, support and test equipment, repair and return support, training equipment and personnel training, U.S. Government and contractor logistics, Quality Assurance Team support services, engineering and technical support, and other related elements of program support.

(iv) *Military Department:* Army (ZUF Amendment 1) .

(v) *Prior Related Cases, if any:* FMS Case JAH–$402 million–11Dec91. FMS Case ZUF–$375 million–22Dec08.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* 21 Sep 2011.

Policy Justification

United Arab Emirates—AGM–114R3 HELLFIRE Missiles

The Government of the United Arab Emirates (UAE) has requested a possible sale 500 AGM–114R3 HELLFIRE II missiles, containers, spare and repair parts, support and test equipment, repair and return support, training equipment and personnel training, U.S. Government and contractor logistics, Quality Assurance Team support services, engineering and technical support, and other related elements of program support. The estimated cost is $65 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be an important force for political stability and economic progress in the Middle East.

UAE intends to use these defense articles and services to modernize its armed forces and expand its existing Army architecture to counter threats posed by potential attack. This proposed sale will also contribute to the UAE military's goal of updating its capability while further enhancing its interoperability with the U.S. and other allies. This capability will serve to deter potential attacks against strategic targets across the UAE, to include infrastructure and resources vital to the security of the U.S.

The proposed sale of this weapon system will not alter the basic military balance in the region.

The prime contractor is HELLFIRE Systems Limited Liability Company in Orlando, Florida. There are no known offset agreements proposed in connection with this sale.

Implementation of this proposed sale will require the assignment of a U.S. Government Quality Assurance Team to the United Arab Emirates.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 11–27

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The highest level for release of the AGM–114R3 HELLFIRE II is Secret, based upon the software. The highest level of classified information that could be disclosed by a proposed sale or by testing of the end item is Secret; the highest level that must be disclosed for production, maintenance, or training is Confidential. Reverse engineering could reveal Confidential information. Vulnerability data, countermeasures, vulnerability/susceptibility analyses, and threat definitions are classified up to Secret.

2. Susceptibility of the AGM–114R3 HELLFIRE II to diversion or exploitation is considered low risk. Components of the system are also considered highly resistant to reverse engineering.

[FR Doc. 2011–25019 Filed 9–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–39]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 11–39 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 23, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

SEP 2 1 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-39, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $5.3 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 11–39

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) *Prospective Purchaser:* Taipei Economic and Cultural Representative Office in the United States pursuant to the Taiwan Relations Act (P. L. 96–8) and Executive Order 13014.

(ii) *Total Estimated Value:*

Major Defense Equipment *	$5.050 billion
Other	.250 billion
Total	5.300 billion

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* retrofit of 145 F–16A/B aircraft that includes sale of: 176 Active Electronically Scanned Array (AESA) radars; 176 Embedded Global Positioning System Inertial Navigation Systems; 176 ALQ–213 Electronic Warfare Management systems; upgrade 82 ALQ–184 Electronic Countermeasures (ECM) pods to incorporate Digital Radio Frequency Memory (DRFM) technology or purchase new ECM pods (AN/ALQ–211(V)9 Airborne Integrated Defensive Electronic Warfare Suites (AIDEWS) with DRFM, or AN/ALQ–131 pods with DRFM); 86 tactical data link terminals; upgrade 28 electro-optical infrared targeting Sharpshooter pods; 26 AN/AAQ–33 SNIPER Targeting Systems or AN/AAQ–28 LITENING Targeting Systems; 128 Joint Helmet Mounted Cueing Systems; 128 Night Vision Goggles; 140 AIM–9X SIDEWINDER Missiles; 56 AIM–9X Captive Air Training Missiles; 5 AIM–9X Telemetry kits; 16 GBU–31V1 Joint Direct Attack Munitions (JDAMs) kits; 80 GBU–38 JDAM kits; Dual Mode/Global Positioning System Laser-Guided Bombs (16 GBU–10 Enhanced PAVEWAY II or GBU–56 Laser JDAM, 80 GBU–12 Enhanced PAVEWAY II or GBU–54 Laser JDAM, 16 GBU–24 Enhanced PAVEWAY III); 64 CBU–105 Sensor Fused Weapons with Wind-Corrected Munition Dispensers (WDMD); 153 LAU–129 Launchers with missile interface; upgrade of 158 APX–113 Advanced Identification Friend or Foe Combined Interrogator Transponders; and HAVE GLASS II applications.

Also included are: ammunition, alternate mission equipment, engineering and design study on replacing existing F100–PW–220 engines with F100–PW–229 engines, update of Modular Mission Computers, cockpit multifunction displays, communication equipment, Joint Mission Planning Systems, maintenance, construction, repair and return, aircraft tanker support, aircraft ferry services, aircraft and ground support equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical, and logistics support, test equipment, site surveys, and other related elements of logistics support.

(iv) *Military Department:* Air Force (QBZ).

(v) *Prior Related Cases, if any:* FMS Case SKA-$5.4B–Nov92.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(viii) *Date Report Delivered to Congress:* 21 Sep 2011.

Policy Justification

Taipei Economic and Cultural Representative Office in the United States—Retrofit of F–16A/B Aircraft

The Taipei Economic and Cultural Representative Office in the United States has requested a retrofit of 145 F–16A/B aircraft that includes sale of: 176 Active Electronically Scanned Array (AESA) radars; 176 Embedded Global Positioning System Inertial Navigation Systems; 176 ALQ–213 Electronic Warfare Management systems; upgrade 82 ALQ–184 Electronic Countermeasures (ECM) pods to incorporate Digital Radio Frequency Memory (DRFM) technology or purchase new ECM pods (AN/ALQ–211(V)9 Airborne Integrated Defensive Electronic Warfare Suites (AIDEWS) with DRFM, or AN/ALQ–131 pods with DRFM); 86 tactical data link terminals; upgrade 28 electro-optical infrared targeting Sharpshooter pods; 26 AN/AAQ–33 SNIPER Targeting Systems or AN/AAQ–28 LITENING Targeting Systems; 128 Joint Helmet Mounted Cueing Systems; 128 Night Vision Goggles; 140 AIM–9X SIDEWINDER Missiles; 56 AIM–9X Captive Air Training Missiles; 5 AIM–9X Telemetry kits; 16 GBU–31V1 Joint Direct Attack Munitions (JDAMs) kits; 80 GBU–38 JDAM kits; Dual Mode/Global Positioning System Laser-Guided Bombs (16 GBU–10 Enhanced PAVEWAY II or GBU–56 Laser JDAM, 80 GBU–12 Enhanced PAVEWAY II or GBU–54 Laser JDAM, 16 GBU–24 Enhanced PAVEWAY III); 64 CBU–105 Sensor Fused Weapons with Wind-Corrected Munition Dispensers (WDMD); 153 LAU–129 Launchers with missile interface; upgrade of 158 APX–113 Advanced Identification Friend or Foe Combined Interrogator Transponders; and HAVE GLASS II applications. Also included are: ammunition, alternate mission equipment, engineering and design study on replacing existing F100–PW–220 engines with F100–PW–229 engines, update of Modular Mission Computers, cockpit multifunction displays, communication equipment, Joint Mission Planning Systems, maintenance, construction, repair and return, aircraft tanker support, aircraft ferry services, aircraft and ground support equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical, and logistics support, test equipment, site surveys, and other related elements of logistics support. The estimated cost is $5.3 billion.

This sale is consistent with United States law and policy as expressed in Public Law 96–8.

This proposed sale serves U.S. national, economic, and security interests by supporting the recipient's continuing efforts to modernize its armed forces and enhance its defensive capability. The proposed sale will help improve the security of the recipient and assist in maintaining political stability, military balance, and economic progress in the region.

The proposed retrofit improves both the capabilities and the reliability of the recipient's fleet of F–16A/B aircraft. The improved capability, survivability, and reliability of newly retrofitted F–16A/B aircraft will greatly enhance the recipient's ability to defend its borders.

The prime contractor will be the Lockheed Martin Aeronautics Company in Fort Worth, Texas. This proposed sale may involve the following additional contractors:

BAE Advance Systems	Greenland, New York
Boeing Integrated Defense Systems	St Louis, Missouri
Goodrich ISR Systems	Danbury, Connecticut
ITT Defense Electronics and Services	McLean, Virginia

ITT Integrated Structures	North Amityville, New York
ITT Night Vision	Roanoke, Virginia
L3 Communications	Arlington, Texas
Lockheed Martin Missile and Fire Control	Dallas, Texas
Lockheed Martin Simulation, Training, and Support	Fort Worth, Texas
Marvin Engineering Company	Inglewood, California
Northrop-Grumman Electro-Optical Systems	Garland, Texas
Northrop-Grumman Electronic Systems	Baltimore, Maryland
Pratt & Whitney	East Hartford, Connecticut
Raytheon Company	Goleta, California
Raytheon Space and Airborne Systems	El Segundo, California
Raytheon Missile System	Tucson, Arizona
Symetrics Industries	Melbourne, Florida
Terma	Denmark

At this time there are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will require the assignment of five (5) contractor representatives to the recipient to provide engineering and technical support for the first two years of the program. Additionally, approximately two trips per year will be required for U.S. Government personnel and contractor representatives for the duration of the program for program and technical support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 11–39

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. This sale will involve the release of sensitive technology to Taiwan. The F–16 A/B retrofit modification will modernize the existing fleet of Taiwan aircraft, equipping the F–16 airframe with advanced avionics and systems.

2. Sensitive and/or classified (up to Secret) elements of the proposed retrofit accessories, components, and associated software: AESA Radar; AN/APX–113 Advanced Identification Friend or Foe (AIFF); ALQ–213 Electronic Warfare Management System; AN/ALQ–184, AN/ALQ–131, or AN/ALQ–211V9 AIDEWS; AN/AAQ–33 SNIPER Targeting Pod or AN/AAQ–28 LITENING Advanced Targeting Pod; Embedded Global Positioning System/Inertial Navigation System, and HAVE GLASS I/II without infrared top coat. Additional sensitive areas include operating manuals and maintenance technical orders containing performance information, operating and test procedures, and other information related to support operations and repair. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters and other similar critical information.

3. The AESA radar (manufacturer to be determined) contains the latest digital technology available in an electronically scanned antenna, including higher processor power, higher transmission power, more sensitive receiver electronics, ground moving detection capability, and Synthetic Aperture Radar (SAR), which creates higher-resolution ground maps from a greater distance than previous versions of the F–16 radar. The retrofit features an increase in detection range of air targets, an increase in processing speed and memory, as well as significant improvements in all modes, jam resistance, and false alarm rates. Complete hardware is classified Confidential; major components and subsystems are classified Confidential; software is classified Secret; and technical data and documentation are classified up to Secret.

4. The AN/APX–113 Identification Friend or Foe (IFF) system is Unclassified as only commercial IFF will be offered.

5. The AN/ALQ–184, AN/ALQ–131, or AN/ALQ–211V9 Airborne Integrated Defensive Electronic Warfare Suite (AIDEWS) provides passive radar warning, wide spectrum Digital RF Memory (DRFM) based jamming, and control and management of the entire EW system. The system is included in an external pod that can be mounted on a properly configured F–16. The commercially developed system software and hardware is Unclassified. The system is classified Secret when loaded with a U.S.-derived EW database.

6. The Joint Helmet Mounted Cueing System (JHMCS) is a modified HGU–55/P helmet that incorporates a visor-projected Heads-Up Display (HUD) to cue weapons and aircraft sensors to air and ground targets. Hardware is Unclassified; technical data and documents are classified up to Secret.

7. The AN/AAQ–33 SNIPER targeting system is Unclassified but contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Confidential.

8. The AN/AAQ–28 LITENING targeting system is Unclassified but contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Confidential. Sensitive elements include the forward looking infrared (FLIR) sensors, Laser Pulse Interval Modulation (PIM) and doublet coding, and the AGM–65 Missile Boresight Correlator (MBC), and ECCM features that increase capability in a jamming environment.

9. The AIM–9X SIDEWINDER Missile is an air-to-air guided missile that employs a passive infrared (IR) target acquisition system that features digital technology and micro-miniature solid-state electronics. The AIM–9X All-Up-Round (AUR) is Confidential, major components and subsystems range from Unclassified to Confidential, and technical data and other documentation are classified up to Secret.

10. The CBU–105D/B Sensor Fused Weapon (SFW) is an advanced 1,000-pound class cluster bomb munition containing sensor fused sub-munitions that are designed to attack and defeat a wide range of moving or stationary land and maritime threats. The SFW meets U.S. policy regarding cluster munition safety standards.

Major components include the SUU–66 Tactical Munitions Dispenser (TMD), ten (10) BLU–108 sub-munitions, each with four (4) ''hockey puck'' shaped skeet infrared sensing projectiles for a total of forty (40) warheads. The

munition will be delivered in its All-Up-Round (AUR) configuration. This configuration is Unclassified.

11. The GBU–24 Enhanced PAVEWAY III (EPIII) is a low level laser and GPS-guided munitions that can be employed at high, medium and low altitudes. Information revealing target designation tactics and associated aircraft maneuvers, the probability of destroying specific/peculiar targets, vulnerabilities regarding countermeasures and the electromagnetic environment is classified Secret. Information revealing test boundaries, operational envelop and release points, the probability of destroying common/unspecified targets, the number of simultaneous lasers the laser seeker head can discriminate, the terminal impact conditions, the operational flight programming, laser seeker sensitivity and range, laser seeker field of view and field of regard, laser seeker tracking gate widths, laser pulse stability requirements, laser pulse width discrimination details, and data on the radar/infra-red frequency is classified Confidential.

12. The Dual Mode Weapon—Enhanced PAVEWAY II (EPW) and Laser Joint Direct Attack Munition (LJDAM). Dual Mode weapons combine laser and GPS guidance modes into a single weapon. Both the EPW and LJDAM weapons are built by adding aerodynamic stabilization kits, guidance and control units, antennas and seeker components to the nose, tail and body of general purpose bombs. They can be added to 500lb and 2000lb class of bombs. These weapons improve the accuracy of unguided, general-purpose bombs. The GPS guidance allows for delivery in adverse weather. The laser guidance mode of these weapons allows for engagement of some mobile targets. The built-up weapons with components are Unclassified. Information revealing employment tactics, operational parameters, the probability of destroying targets, vulnerabilities regarding countermeasures and the electromagnetic environment is classified up to Confidential.

13. The Joint Direct Attack Munition (JDAM) is a guidance tail kit that converts unguided free-fall bombs into accurate, adverse weather ''smart'' munitions. With the addition of a new tail section that contains an inertial navigational system and a global positioning system guidance control unit, JDAM improves the accuracy of unguided, general-purpose bombs in any weather condition. JDAM can be launched from very low to very high altitudes in a dive, toss and loft, or in straight and level flight with an on-axis or off-axis delivery. JDAM enables multiple weapons to be directed against single or multiple targets on a single pass. The JDAM AUR and all of its components are unclassified, technical data for JDAM is classified up to Secret.

14. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software, the information could be used to develop countermeasures, which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2011–25021 Filed 9–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–34]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 11–34 with attached transmittal and policy justification.

Dated: September 23, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

SEP 2 1 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-34, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $52 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

BILLING CODE 5001–06–C

Transmittal No. 11–34

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) *Prospective Purchaser:* Taipei Economic and Cultural Representative Office in the United States pursuant to the Taiwan Relations Act (P. L. 96–8) and Executive Order 13014.

(ii) *Total Estimated Value:*

Major Defense Equipment*	$ 0 million
Other	52 million
Total	52 million

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* a Foreign Military Sales Order II (FMSO II) to provide funds for blanket order requisitions, under the Cooperative Logistics Supply Agreement (CLSSA) for spare parts in support of F–16A/B, F–5E/F, C–130H, and Indigenous Defense Fighter aircraft.

(iv) *Military Department:* Air Force (KDN)

(v) *Prior Related Cases, if any:*

FMS Case KAV—$2.7M–Nov67
FMS Case KDE—$40M–Nov95
FMS Case KDI—$48M–Mar06
FMS Case KDJ—$48M–Jan08
FMS Case KDK—$209M–Feb09
FMS Case KDL—$48M–Oct08
FMS Case KDM—$48M–May11

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 21 Sep 2011

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States—Foreign Military Sales Order II (FMSO II)

The Taipei Economic and Cultural Representative Office in the United States has requested a Foreign Military Sales Order II (FMSO II) to provide funds for blanket order requisitions, under the Cooperative Logistics Supply Agreement (CLSSA) for spare parts in support of F–16A/B, F–5E/F, C–130H, and Indigenous Defense Fighter (IDF) aircraft. The estimated cost is $52 million.

This sale is consistent with United States law and policy as expressed in Public Law 96–8.

This proposed sale serves U.S. national, economic, and security interests by supporting the recipient's continuing efforts to modernize its armed forces and enhance its defensive capability. The proposed sale will help improve the security of the recipient and assist in maintaining political stability, military balance, and economic progress in the region.

The recipient requires continuing procurement and repair of aircraft spare parts through the USG's FMSO II program in order to sustain and keep flyable its military fleets of F–16, F–5, C–130, and IDF aircraft. The spare parts to be procured and/or repaired under this proposed sale are critical for maintaining their fighter and transport aircraft in operational condition.

Procurement of these items will be from many contractors providing similar items to the U.S. forces. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to the recipient.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2011–25020 Filed 9–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–26]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 11–26 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 23, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–01–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

SEP 21 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-26, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Qatar for major defense equipment estimated to cost $750 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivy of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 11–26

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Qatar.

(ii) *Total Estimated Value:*

Major Defense Equipment *	$300 million
Other	400 million
Total	750 million

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 6 MH–60R SEAHAWK Multi-Mission Helicopters, 13 T–700 GE 401C Engines (12 installed and 1 spare), communication equipment, support equipment, spare and repair parts, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Navy (SAF).

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(viii) *Date Report Delivered to Congress:* 21 Sep 2011.

Policy Justification

Qatar—MH–60R Multi-Mission Helicopters

The Government of Qatar has requested a possible sale of 6 MH–60R SEAHAWK Multi-Mission Helicopters, 13 T–700 GE 401C Engines (12 installed and 1 spare), communication equipment, support equipment, spare and repair parts, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics support. The estimated cost is $750 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for political and economic progress in the Middle East.

Qatar is host to the US AFCENT forces and serves as a critical forward-deployed location in the region.

The proposed sale of the MH–60R SEAHAWK helicopters will improve Qatar's capability to meet current and future anti-surface warfare threats. Qatar will use the enhanced capability to strengthen its homeland defense. The MH–60R helicopters will supplement and eventually replace the Qatar Air Force's aging maritime patrol helicopters. Qatar will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Sikorsky Aircraft Corporation in Stratford, Connecticut, Lockheed Martin in Owego, New York, and General Electric in Lynn, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of ten contractor representatives to Qatar on an intermittent basis over the life of the case to support delivery of the MH–60R helicopters and provide support and equipment familiarization.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 11–26

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The MH–60R SEAHAWK Multi-Mission Helicopter contains new generation technology. It is equipped for a range of missions including Anti-Surface Warfare (ASuW), Search and Rescue, Naval Gun Fire Support, Surveillance, Communications Relay, Logistics Support, Personnel Transfer, and Vertical Replenishment. The fully integrated glass cockpit is equipped with four 8 inch by 10 inch full color multi-function mission and flight displays that are night vision goggle compatible and sun light readable. The pilots and aircrew have common programmable keysets, mass memory unit, mission and flight management computers, and MH–60R dedicated operational software. The navigation suite includes the LN–100G inertial navigation system with embedded global positioning system (GPS). The helicopter is equipped with mission systems including the APS–153 Multi-Mode Radar, the AN/ALQ–210 Electronic Support Measures System (ESM), and the AN/AAS–44 Multi-Spectral Targeting Forward Looking Infrared (MTS FLIR) system. Self Protection systems include the AN/AAR–47 Missile Warning Set, AN/ALQ–144A IR Counter Measure System (IRCM), and the AN/ALE–47chaff and flare decoy dispenser.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2011–25018 Filed 9–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–17]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 11–17 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 23, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

SEP 21 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-17, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the United Arab Emirates for major defense equipment estimated to cost $401 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 11–17

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* United Arab Emirates.

(ii) *Total Estimated Value:*

Major Defense Equipment *	$27 million.
Other	374 million.
Total	401 million.

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 107 Link 16 Multifunctional Information Distribution System/Low Volume Terminals (MIDS/LVT) to be installed on the United Arab Emirates' F–16 aircraft and ground command and control sites, engineering/integration services, aircraft modification and installation, spare and repair parts, support and test equipment, repair and return support, training equipment and personnel training, U.S. Government and contractor logistics, engineering and technical support, interface with ground command and control centers and ground repeater sites, and other related elements of program support.

(iv) *Military Department:* Air Force (QAE).

(v) *Prior Related Cases, if any:* FMS Case SAA–$113.8M–24Aug00.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* 21 Sep 2011.

Policy Justification

United Arab Emirates—MIDS/LVT LINK 16 Terminals

The Government of the United Arab Emirates (UAE) has requested a possible sale of 107 Link 16 Multifunctional Information Distribution System/Low Volume Terminals (MIDS/LVT) to be installed on the United Arab Emirates F–16 aircraft and ground command and control sites, engineering/integration services, aircraft modification and installation, testing, spare and repair parts, support equipment, repair and return support, personnel training, contractor engineering and technical support, interface with ground command and control centers and ground repeater sites, and other related elements of program support. The estimated cost is $401 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be an important force for political stability and economic progress in the Middle East.

The MIDS terminal will increase pilot operational effectiveness by at-a-glance portrayal of targets, threats, and friendly forces on an easy-to-understand relative position display. This proposed system will increase combat effectiveness while reducing the threat of friendly fire. The system will foster interoperability with the U.S. Air Force and other countries. The MIDS/LVT will provide allied forces greater situational awareness in any coalition operation. The United Arab Emirates will have no difficulty absorbing this additional capability into its Air Force.

The proposed sale of this weapon system will not alter the basic military balance in the region.

There are several manufacturers of the Link 16 MIDS–LVT. A prime contractor will be selected during the negotiating process. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of additional U.S. Government and contractor representatives to the UAE. The number of U.S. Government and contractor representatives will be determined in joint negotiations as the program proceeds through the development, production, and equipment installation phases.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 11–17

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Multifunctional Information Distribution System/Low Volume Terminals (MIDS–LVT) Communication Security (COMSEC) device provides improved situational awareness and sensor cueing in support of air superiority and interdiction missions. The Link 16 tactical data link provides networking with other Link 16-capable aircraft, command, and control systems. The MIDS/LVT and MIDS On Ship Terminal hardware, publications, performance specifications, operational capability, parameters, vulnerabilities to countermeasures, and software documentation are classified Confidential. The classified information to be provided consists of that which is necessary for the operation, maintenance, and repair (through intermediate level) of the data link terminal, installed systems, and related software.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2011–25016 Filed 9–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Performance Review Board

AGENCY: Office of the Secretary (OSD), Department of Defense (DoD).

ACTION: Notice of board membership.

SUMMARY: This notice announces the appointment of the Department of Defense, Fourth Estate, Performance Review Board (PRB) members, to include the Joint Staff, Defense Field Activities, the U.S. Court of Appeals for the Armed Forces and the following Defense Agencies: Defense Advance Research Projects Agency, Defense Contract Management Agency, Defense Commissary Agency, Defense Security Cooperation Agency, Defense Legal Services Agency, Defense Logistics Agency, Defense Threat Reduction Agency, Missile Defense Agency, and Pentagon Force Protection Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB shall provide fair and impartial review of Senior Executive Service and Senior Professional performance appraisals and make recommendations regarding performance ratings and performance awards to the Deputy Secretary of Defense.

DATES: *Effective Date:* September 16, 2011.

FOR FURTHER INFORMATION CONTACT: Michael L. Watson, Assistant Director for Executive and Political Personnel, Washington Headquarters Services, Office of the Secretary of Defense, (703) 693–8373.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the Office of the Secretary of Defense

PRB with specific PRB panel assignments being made from this group. Executives listed will serve a one-year renewable term, effective September 16, 2011.

Office of the Secretary of Defense

Chairperson

Christine Condon

PRB PANEL MEMBERS

Ahmed, Sajeel	Liotta, Jay
Anderson, Gretchen	McFarland, Katharina
Bexfield, James	McGrath, Elizabeth
Bradley, Leigh	Middleton, Allen
Bunn, Brad	Milks, Thomas
Cabrera, Louis	Morgan, Timothy
Cofer, Jonathan	Pennett, John
Conklin, Pamela	Peters, Paul
Durand, Shari	Pontius, Ronald
Ewell, Webster	Rogers, Angela
France, Joyce	Russell, James
Frothingham, Edward.	Shaffer, Alan
Hinkle-Bowles, Stephanie.	Snavely-Dixon, Mary
Hollis, Caryn	Stein, Joseph
Hopkins, Arthur	Wennergren, David
James, John Jr.	Wright, Garland
Koffsky, Paul	Wright, Jessica
Kozemchak, Paul	Yarwood, Susan

Dated: September 26, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–25043 Filed 9–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket No. DARS–2011–0050–0002]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by October 31, 2011.

Title, Associated Forms and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 229, Taxes, and related clause at DFARS 252.229–7010; OMB Control Number 0704–0390.

Type of Request: Extension.

Number of Respondents: 75.

Responses Per Respondent: 1.

Annual Responses: 75.

Average Burden Per Response: 4 hours.

Annual Burden Hours: 300 hours.

Needs and Uses: DoD uses this information to determine if DoD contractors in the United Kingdom have attempted to obtain relief from customs duty on vehicle fuels in accordance with contract requirements.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: September 23, 2011.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2011–25047 Filed 9–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Commercial Item Handbook

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Request for public input.

SUMMARY: DoD has updated its Commercial Item Handbook. The purpose of the Handbook is to help acquisition personnel develop sound business strategies for procuring commercial items. DoD is seeking industry input on the contents before finalizing the Handbook.

DATES: Comments should be submitted in writing to the address shown below on or before November 30, 2011, to be considered in the formation of the final Handbook.

ADDRESSES: You may submit comments to the Office of the Director, Defense Procurement and Acquisition Policy, Attention OUSD(AT&L)DPAP/CPIC, 3060 Defense Pentagon, Washington, DC 20301–3060. Comments also may be submitted by e-mail to *CI_Handbook@osd.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. Cassandra R. Freeman, 703–693–7062, or by e-mail at *Cassandra.Freeman@osd.mil.*

SUPPLEMENTARY INFORMATION: On July 1, 2009, DoD published a request for public input on the draft Commercial Item Handbook issued by the Office of the Secretary of Defense (Acquisition, Technology, and Logistics) in November 2001. Comments were received and incorporated. A draft of the updated Commercial Item Handbook can be found at *http://www.acq.osd.mil/dpap/cpic/draftcihandbook08012011.docx.* DoD is seeking industry input on the contents before finalizing the Handbook.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2011–25048 Filed 9–28–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Haile Gold Mine in Lancaster County, SC

AGENCY: Department of the Army, U.S. Army Corps of Engineers.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers, Charleston District intends to prepare a Draft Environmental Impact Statement (DEIS) to assess the potential social, economic and environmental effects of the proposed construction and operation of a gold mine in order to extract and process gold from the Haile ore body in wetlands and streams associated with Haile Gold Mine Creek, by Haile Gold Mine, Inc. (Haile) in the vicinity of Kershaw, in Lancaster County, South Carolina. The DEIS will assess potential effects of a range of alternatives.

DATES: *General Public Scoping Meeting:* One Public Scoping meeting is planned for Thursday October 27, 2011 beginning at 5 p.m. EDT at the Andrew Jackson Recreation Center, 6354 N Matson St, Kershaw, SC 29067.

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about the proposed project and DEIS, please contact Dr. Richard L. Darden, Project Manager, by *telephone:* 843–329–8043 or toll free 1–866–329–8187, or by *mail:*

CESAC–RE–P, 69–A Hagood Avenue, Charleston, SC 29403. For inquiries from the media, please contact the Corps, Charleston District Corporate Communications Officer (CCO), Ms. Glenn Jeffries by *telephone:* (843) 329–8123.

SUPPLEMENTARY INFORMATION: An application for a Department of the Army permit was submitted by Haile pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) on January 12, 2011 and was advertized in a Joint Public Notice, P/N # SAC 1992–24211–4_Lancaster_County on January 28, 2011. The public notice is available on Charleston District's public Web site at: *http://www.sac.usace.army.mil/?action=publicnotices.pn2011.*

1. *Description of Proposed Project.* The project proposed by Haile is to reactivate the existing Haile Gold Mine near Kershaw, SC for the development of gold resources, to expand the area for open pit mining, and to construct associated facilities. The Haile Gold Mine Site encompasses approximately 4,231 acres. Mining will occur in phases involving eight open mining pits over a twelve-year period, with pit depths ranging from 110 to 840 feet deep. The proposed work includes the mechanized land clearing, grubbing, temporary stockpiling, filling, and excavation that will impact 161.81 acres of jurisdictional, freshwater wetlands and 38,775 linear feet of streams. Construction drawings provided by the applicant are included in the original joint public notice of January 28, 2011, and are available on Charleston District's public Web site at *http://www.sac.usace.army.mil/?action=publicnotices.pn2011.*

2. *Alternatives.* A range of alternatives to the proposed action will be identified, and those found to be reasonable alternatives will be fully evaluated in the DEIS, including: The no-action alternative, the applicant's proposed alternative, alternative mine locations and mine plans, alternative mining methods and processes, alternatives that may result in avoidance and minimization of impacts, and mitigation measures not in the proposed action. However, this list is not exclusive and additional alternatives may be considered for inclusion.

3. *Scoping and Public Involvement Process.* A scoping meeting will be conducted to gather information on the scope of the project and alternatives to be addressed in the DEIS. Additional public and agency involvement will be sought through the implementation of a public involvement plan and through an agency coordination team.

4. *Significant Issues.* Issues associated with the proposed project to be given detailed analysis in the DEIS are likely to include, but are not necessarily limited to, the potential impacts of the proposed Haile Gold Mine on surface and groundwater quality, aquatic habitat and biota, wetlands and stream habitats, federal and state listed species of concern, indirect and cumulative impacts, drinking water supplies, mitigation, emergency response and contingency plans, mine closure and rehabilitation, conservation, economics, aesthetics, general environmental concerns, historic properties, fish and wildlife values, flood hazards, land use, recreation, water supply and conservation, water quality, energy needs, safety, and the needs and welfare of the people.

5. *Additional Review and Consultation.* Additional review and consultation which will be incorporated into the preparation of this DEIS will include, but will not necessarily be limited to, Section 401 of Clean Water Act; Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act; the National Environmental Policy Act; the Endangered Species Act; and the National Historic Preservation Act.

6. *Availability of the Draft Environmental Impact Statement.* The Draft Environmental Impact Statement (DEIS) is anticipated to be available late in 2012. A Public Hearing will be conducted following the release of the DEIS.

Edward P. Chamberlayne,

Commander, U.S. Army Corps of Engineers, Charleston District.

[FR Doc. 2011–25140 Filed 9–28–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Issuance of a Loan Guarantee to Tonopah Solar Energy, LLC, for the Crescent Dunes Solar Energy Project

AGENCY: U.S. Department of Energy.

ACTION: Record of decision.

SUMMARY: The U.S. Department of Energy (DOE) announces its decision to issue a Federal loan guarantee under Title XVII of the Energy Policy Act of 2005 (EPAct 05), as amended by Section 406 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), to Tonopah Solar Energy, LLC (TSE), for construction and start-up of the Crescent Dunes Solar Energy Project (the Project). The Project is a proposed 110-megawatt solar power generating facility based on concentrating solar power technology, using mirrors and a central receiver, on approximately 2,250 acres of U.S. Bureau of Land Management (BLM)-administered lands in Nye County, Nevada. The environmental impacts of construction and start-up of the Project were analyzed in the *Final Environmental Impact Statement for the Tonopah Solar Energy, LLC, Crescent Dunes Solar Energy Project, Nye County, Nevada* (75 FR 70917, November 19, 2010) (FEIS), prepared by BLM with DOE as a cooperating agency. BLM consulted DOE during the preparation of this EIS, DOE provided comments, and BLM addressed those comments in the FEIS. DOE subsequently determined that the Project analyzed in the FEIS was substantially the same as the Project that would be covered by the DOE loan guarantee, and DOE adopted the FEIS (76 FR 7844; February 11, 2011).

ADDRESSES: Copies of this Record of Decision (ROD) and the FEIS may be obtained by contacting Angela Colamaria, DOE National Environmental Policy Act (NEPA) Document Manager, Environmental Compliance Division, Loan Programs Office (LP–10), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202) 287–5387; or e-mail at *Angela.Colamaria@hq.doe.gov*, or by accessing these documents on the DOE NEPA Web site at *http://*

nepa.energy.gov and at the Loan Programs Office Web site at *http://www.lgprogram.energy.gov/NEPA_EIS.html.*

FOR FURTHER INFORMATION CONTACT: Angela Colamaria, as indicated in the **ADDRESSES** section above. For general information on the DOE NEPA process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202) 586–4600; leave a message at (800) 472–2756; or e-mail *AskNEPA@hq.doe.gov.* Information about DOE NEPA activities and access to DOE NEPA documents are available on the DOE NEPA Web site at *http://nepa.energy.gov.*

SUPPLEMENTARY INFORMATION:

Project Background

The Project is a proposed 110-megawatt solar power generating facility based on concentrating solar power technology. This technology uses heliostats (reflecting mirrors) to redirect sunlight onto a receiver erected in the center of a solar field (called the central receiver). The proposed solar power facility is to be located on approximately 2,250 acres of BLM-managed lands in south-central Nevada, roughly 13.5 miles northwest of Tonopah, in Nye County, and located within the southern portion of the Big Smoky Valley, north of US Highway 95/6 along Pole Line Road (State Highway 89). The proposed facility will consist of up to approximately 17,500 heliostats/reflecting mirrors occupying about 1,600 acres of the total project area. Each heliostat will be approximately 670 square feet, together yielding a total reflecting surface of about 12,000,000 square feet (275.48 acres). The arrangement of the heliostats within the array will be optimized to maximize the amount of solar energy that could be collected by the field. The solar collecting tower/central receiver system will generate electric power from sunlight by focusing concentrated solar radiation onto a tower-mounted receiver. The solar collecting tower will be a total of 653 feet high, including a 100-foot tall cylindrical receiver mounted on the top of the tower. The central receiver system will consist of a series of tubes through which a liquid salt passes and is heated by the concentrated solar energy. The heated salt will be routed to a large insulated tank where it will be stored with minimal energy loss. To generate electricity, the heated salt will be circulated through a series of heat exchangers to generate high-pressure, superheated steam that will be used to power a conventional Rankine cycle steam turbine/generator. Energy produced from the facility will connect to the electrical grid through a new 6.9-mile 230 kilovolt (kV) transmission line that will follow a path west to an existing transmission alignment. A 40-acre borrow pit will be needed to extract aggregate for construction of the access road and the base of the proposed facility. A paved, two-lane access road will extend approximately 1,500 feet from Pole Line Road to the proposed facility.

DOE's offer of a loan guarantee for the Project is authorized under Title XVII of the Energy Policy Act of 2005, as amended by Section 406 of the Recovery Act. Title XVII as amended authorizes a program for rapid deployment of renewable energy and electric power transmission projects (the Section 1705 Program).

Before applying for a loan guarantee, TSE filed an application with BLM for a land use right-of-way pursuant to Title V of the Federal Land Policy and Management Act (43 U.S.C. 1761), which authorizes BLM to issue right-of-way (ROW) lease/grants for renewable energy projects on BLM land. The issuance of this ROW lease/grant was considered a major Federal action as defined by NEPA, and preparation of an EIS was initiated by BLM.

NEPA Review

BLM was the lead Federal agency in the preparation of the EIS, and DOE was a cooperating agency pursuant to a Memorandum of Understanding between BLM and DOE signed in February 2009. DOE reviewed the content of the EIS, and provided comments to BLM to ensure that information required by DOE NEPA regulations (10 CFR Part 1021) was included, and that the analyzed alternatives encompassed DOE's proposed loan guarantee for construction and start-up of the Project.

On November 24, 2009, BLM published the ''Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Tonopah Solar Energy, LLC, Crescent Dunes Solar Energy Project, Nye County, Nevada'' in the **Federal Register** (74 FR 225). Both the Environmental Protection Agency (EPA) and BLM published Notices of Availability of the Draft Environmental Impact Statement (DEIS) in the **Federal Register** on September 3, 2010 (75 FR 54145 and 75 FR 54177, respectively). The DEIS was available for a 45-day public comment period, which closed on October 18, 2010. Two open house public meetings were held to provide further public involvement: One in Las Vegas, Nevada, on September 22, 2010, and the other in Tonopah, Nevada, on September 23, 2010. During the comment period for the DEIS, BLM received 23 comment letters. Comments received on the DEIS were addressed in the FEIS, and resulted in the addition of clarifying text.

BLM completed the Project FEIS in cooperation with the United States Air Force, DOE, the Nevada Department of Wildlife, Nye County, Esmeralda County, and the Town of Tonopah; EPA published a Notice of Availability for the FEIS in the **Federal Register** on November 19, 2010 (75 FR 70917). The FEIS analyzed the environmental impacts that would be associated with construction and operation of the Project, and addressed public comments.

On December 20, 2010, BLM decided to allow a solar energy ROW lease/grant to TSE for the Project to be constructed on BLM-managed land in Nye County, Nevada. BLM identified its Selected Alternative and the Secretary of the Interior issued Secretarial Approval of this decision. The environmental mitigation measures for the Project were specified in BLM's ROD (75 FR 81307; December 27, 2010). Links to these documents can be found at the BLM Web site: *http://www.blm.gov/nv/st/en/fo/battle_mountain_field/blm_information/national_environmental/crescent_dunes_solar.html.*

After independently reviewing the BLM FEIS, DOE determined that the issues raised by commenters have been adequately addressed in the FEIS. On January 31, 2011, DOE adopted the FEIS (DOE/EIS–0454) to meet its NEPA obligations related to its proposal to provide up to $737 million in a loan guarantee to support the financing of the Project. The Notice of Adoption was published by EPA in the **Federal Register** on February 11, 2011 (76 FR 7844).

Alternatives Considered

BLM considered three site locations that would occupy nearly equal acreage on lands administered by BLM and would use the same concentrating solar power technology. BLM's Proposed Action would eliminate 1,374 acres of Nevada oryctes (a state protected plant) habitat and 1,466 acres of pale kangaroo mouse (a state protected species) habitat. The Proposed Action would be located to the south of the Crescent Dunes Special Recreation Management Area (SRMA), but would not encroach on the SRMA. It would have potential conflicts with the Air Force radar testing

mission at the nearby Nevada Test and Training Range.

BLM's Alternative 1 would encroach on 130 acres of a ROW avoidance area for the Crescent Dunes SRMA, thus creating the need for an amendment to the Tonopah Resource Management Plan. This alternative would eliminate 803 acres of Nevada oryctes habitat, 1,191 acres of pale kangaroo mouse habitat, and 7 acres of habitat for several endemic species of scarab beetles (BLM sensitive species). Alternative 1 would minimize potential conflicts with military operations for the Air Force radar testing mission.

BLM's Preferred Alternative, which it selected in its ROD, is Alternative 2. Alternative 2 is situated on low or no-relief public land. This alternative encompasses 2,250.27 acres of public lands. However, the proposed project facility would only utilize approximately 2,094.27 acres, of which 1,620 acres would be disturbed. Alternative 2 is located to the west of the Crescent Dunes SRMA and eliminates or reduces environmental impacts overall, such as visual impacts to recreational users of the SRMA. The site would disturb 434 acres of habitat for the Nevada oryctes and the pale kangaroo mouse, and there would be no impacts to habitat for the endemic species of scarab beetles. The site also minimizes potential conflicts with military operations for the Air Force radar testing mission. Finally, the site is located closer to an access road and an existing transmission line, and would therefore reduce the amount of necessary surface disturbance.

BLM also examined the impacts resulting from a No Action Alternative, under which the Project would not be constructed. All of these alternatives were described in detail and fully analyzed in the FEIS.

DOE's decision is whether or not to issue a loan guarantee to Tonopah Solar Energy, LLC, for $737 million to support construction and startup of the Project as selected in the BLM ROD. Accordingly, the DOE alternatives are to issue the loan guarantee to TSE for construction and start-up of the Project under Alternative 2, which BLM selected in its ROD, and the No Action Alternative. Under the No Action Alternative, DOE would not issue a loan guarantee for the Project and it is not likely that TSE would implement the Project as currently planned.

Environmentally Preferred Alternative

BLM identified Alterative 2 as the Environmentally Preferred Alternative. This Alternative has the least impacts to special status plants and wildlife species, stays within the existing transmission corridor and reduces the length of the transmission line needed. It does not encroach upon the Crescent Dunes SRMA.

DOE has decided that its alternative to issue a loan guarantee for construction and start-up of the Project, as selected in the BLM ROD, is environmentally preferable. DOE has determined that the Project offers substantial environmental benefits due to reductions in greenhouse gas emissions, as described in the FEIS. DOE has also determined that all practicable means to avoid or minimize environmental harm, as described in the BLM ROD, have been adopted as mitigation measures by BLM.

Consultation

As the lead Federal agency for the Crescent Dunes Solar Energy Project, BLM complied with section 106 of the National Historic Preservation Act, section 7 of the Endangered Species Act, and the Bald and Golden Eagle Protection Act, and entered into government-to-government consultations with Native American tribes. The mitigation measures included in the BLM decision resulted from these consultations and are addressed in the FEIS and BLM ROD. Specifically, the Nevada State Historic Preservation Office (SHPO) reviewed this project under section 106 of the National Historic Preservation Act, and concurred with BLM's determinations of site eligibility to the National Register of Historic Places (NRHP) of nine eligible properties that will be affected by this project. A Historic Properties Treatment Plan describing mitigation measures that will be employed to resolve any adverse effect to the nine NRHP eligible sites has been prepared. A Memorandum of Agreement between the BLM and Nevada SHPO has been implemented to ensure the Historic Properties Treatment Plan will mitigate any adverse effect to these NRHP-eligible sites. Furthermore, an Endangered Species Act section 7 consultation was completed by BLM during the NEPA process, and a Wildlife Mitigation and Monitoring Plan was included in the FEIS. Finally, BLM conducted and completed Tribal consultation with Federally-Recognized Indian Tribes, and consulted with the Nevada SHPO.

Decision

DOE has decided to issue a loan guarantee for construction and start-up of the Crescent Dunes Solar Energy Project, as selected in the BLM ROD.

Approval of the loan guarantee for the Project responds to DOE's purpose and need pursuant to Title XVII of EPAct 05, as amended by section 406 of the Recovery Act, which authorizes a new program for rapid deployment of renewable energy projects. The primary purposes of the Recovery Act are job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization. The Section 1705 Program is designed to address the current economic conditions of the Nation, in part, through renewable energy, transmission, and leading-edge biofuels projects. Eligible projects must commence construction no later than September 30, 2011.

In reaching this decision, DOE reviewed the Project NEPA documentation and considered the potential impacts of the selected alternative, including implementation of the stipulated mitigation measures. DOE prepared this ROD in accordance with the Council on Environmental Quality regulations for implementing NEPA and DOE's NEPA Implementing Procedures.

Mitigation

The Project that will be supported by issuance of the DOE loan guarantee includes all mitigation conditions applied by BLM in its ROD. BLM is the Federal lead agency for the Project under NEPA, and is responsible for ensuring compliance with all adopted mitigation measures for the Project set out in its ROD. A description of the mitigation measures is provided in the BLM ROD and in BLM's ROW lease/grant (Appendix A to the BLM ROD). BLM has incorporated these mitigation measures into the ROW lease/grant as terms and conditions (Exhibit B to the ROW lease/grant).

The DOE loan guarantee agreement requires the applicant to comply with all applicable laws and the terms of the ROW lease/grant, including its mitigation measures. An applicant's failure to comply with applicable laws and the ROW lease/grant would constitute a default. Upon the continuance of a default, DOE would have the right under the loan guarantee agreement between it and the applicant to exercise usual and customary remedies. To ensure that the applicant so performs, the DOE Loan Programs Office proactively monitors all operative loan guarantee transactions.

Issued in Washington, DC, on September 23, 2011.

Jonathan M. Silver,

Executive Director, Loan Programs Office.

[FR Doc. 2011–25049 Filed 9–28–11; 8:45 am]

BILLING CODE 6450–10–P

DEPARTMENT OF ENERGY

Hydrogen and Fuel Cell Technical Advisory Committee (HTAC)

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

ACTION: Notice of open meeting.

SUMMARY: The Hydrogen and Fuel Cell Technical Advisory Committee (HTAC) was established under section 807 of the Energy Policy Act of 2005 (EPAct) (Pub. L. 109–58; 119 Stat. 849). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that publish notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 3, 2011; 9 a.m.–6:15 p.m.

Friday, November 4, 2011; 9 a.m.–2:45 p.m.

ADDRESSES: L'Enfant Plaza Hotel DC, 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Please send an e-mail to: *HTAC@nrel.gov*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice, information, and recommendations to the Secretary on the program authorized by Title VIII of EPAct.

Tentative Agenda: (Subject to change; updates will be posted on the website at: *http://hydrogen.energy.gov* and copies of the final agenda will available the date of the meeting).

- Public Comment.
- Coordination with Efficiency and Renewable Advisory Committee.
- Impact of Natural Gas Supply on Fuel Cell and Hydrogen Market.
- Industry Presentations.
- Status Cost and Performance of Battery Technology.
- Vehicle Battery Charging Cost.
- European Large-Scale Hydrogen Storage of Renewable Electricity.
- Financing Hydrogen and Fuel Cell Technologies.
- State Initiatives.

Public Participation: Members of the public are welcome to observe the business of the meeting of HTAC and to make oral statements during the specified period for public comment. The public comment period will take place between 9:15 a.m. and 9:30 a.m. on November 3, 2011. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, please send an e-mail to: *HTAC@nrel.gov* at least five business days before the meeting. Please indicate if you will be attending the meeting, whether you want to make an oral statement, and what organization you represent (if appropriate). Members of the public will be heard in the order in which they sign up for the public comment period. Oral comments should be limited to two minutes in length. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business. If you would like to file a written statement with the committee, you may do so either by submitting a hard copy at the meeting or by submitting an electronic copy by e-mail to: *HTAC@nrel.gov.*

Minutes: The minutes of the meeting will be available for public review at the following Web site: *http://hydrogen.energy.gov.*

Issued at Washington, DC on September 23, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–25058 Filed 9–28–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Record of Decision, Texas Clean Energy Project

AGENCY: Department of Energy.

ACTION: Record of decision.

SUMMARY: The U.S. Department of Energy (DOE) announces its decision to continue to provide financial support to the Texas Clean Energy Project (TCEP). DOE prepared an Environmental Impact Statement (EIS) (DOE/EIS–0444) to assess the environmental impacts associated with the TCEP, a project that Summit Texas Clean Energy, LLC (Summit) would design, construct, and operate. The project will demonstrate advanced power systems using integrated gasification combined-cycle (IGCC) technology to generate 400 megawatts (gross) of electric power from coal and will put 130 to 213 megawatts on the power grid while capturing approximately 90 percent of its carbon dioxide (CO_2) emissions. The project will sequester approximately 2.5 to 3.0 million tons (2.3 to 2.7 million metric tonnes) of CO_2 per year. The CO_2 will be delivered through a regional pipeline network to existing oil fields in the Permian Basin of West Texas for use in enhanced oil recovery (EOR) by third-parties. The plant will also produce urea, argon, and sulfuric acid for sale in commercial markets. Because of its multiple products, the facility is referred to as a polygeneration (polygen) plant. The plant will be built on a 600-acre (243-hectare) oil field site in Ector County, Texas, north of the community of Penwell, and will continue in commercial operation for 30 to 50 years.

DOE's proposed action, as described in the EIS, is to provide cost-shared financial assistance under DOE's Clean Coal Power Initiative (CCPI) using a combination of American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5) funds and other CCPI program funds. After careful consideration of the potential environmental impacts and other factors such as program goals and objectives, DOE has decided to provide, through a cooperative agreement with Summit, $450 million in cost-shared funding, which is approximately 26 percent of the project's total capital cost of $1.73 billion (2009 dollars). The balance of project funding is expected to come from private sector investors and lenders.

ADDRESSES: The Final EIS is available on the National Energy Technology Laboratory's Web site at: *http://www.netl.doe.gov/publications/others/nepa/index.html* and on the DOE NEPA Web site at: *http://energy.gov/nepa.* Copies of the EIS may be obtained from Mr. Mark L. McKoy, Environmental Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880; telephone: 304–285–4426; toll-free number: 1–800–432–8330 (ext 4426); fax: 304–285–4403; or e-mail: *mmckoy@netl.doe.gov.*

FOR FURTHER INFORMATION CONTACT: To obtain additional information about this project, the EIS, or this Record of Decision (ROD), contact Mr. McKoy by the means specified above under **ADDRESSES**. For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone: 202–586–4600; fax: 202–586–7031; or leave a toll-free message at: 1–800–472–2756.

SUPPLEMENTARY INFORMATION: DOE prepared this ROD pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality's (CEQ's) regulations for implementing the procedural provisions of NEPA [40 Code of Federal Regulations (CFR) Parts 1500–1508], DOE's NEPA regulations (10 CFR Part 1021), and DOE's Compliance with Floodplain and Wetland Environmental Review Requirements (10 CFR Part 1022). This

ROD is based on DOE's Final EIS for the Texas Clean Energy Project (DOE/EIS–0444), comments submitted on the EIS and proposed project, other information, and program considerations.

Background and Purpose and Need for Agency Action

The TCEP involves the planning, design, construction, and operation by Summit of a coal-fueled electric power and chemicals production plant integrated with CO_2 capture and geologic sequestration through EOR. Summit is owned jointly by the Summit Power Group, Inc., and CW NextGen, Inc., a Clayton Williams company. The project team includes Summit; Summit Power Group, Inc.; Siemens Energy, Inc.; Linde, AG; Fluor Corporation; Blue Source, LLC; and others.

DOE selected this project for an award of financial assistance through a competitive process under the CCPI Round 3 program pursuant to the process set out in Funding Opportunity Announcement (FOA) DE–FOA–0000042. DOE's financial assistance will occur through cost sharing as specified under the terms of a financial assistance agreement between DOE and Summit. This project includes a demonstration period (including plant reliability and operations testing) following the construction and commissioning of the plant and continuing until the end of the cooperative agreement's period of performance (July 15, 2017).

As the nation's most abundant fossil fuel, coal is expected to have an important role in the United States' energy future. However, fossil fuel combustion is a major source of anthropogenic CO_2 emissions. Electric power generation contributes approximately 39 percent of all CO_2 emissions in the U.S. In 2009, 81 percent of all electricity production-related CO_2 emissions resulted from the burning of coal.

Public Law 107–63, enacted in November 2001, established the CCPI program, which is a cost-shared collaboration between the Federal government and industry to increase investment in advanced, low-emissions coal technologies. Later, with Title IV of the Energy Policy Act of 2005 (EPACT 2005) (Pub. L. 109–58), the Congress established additional criteria for projects receiving financial assistance under the CCPI program. Under these criteria, CCPI projects must help the nation successfully commercialize advanced power systems that ''advance efficiency, environmental performance, and cost competitiveness well beyond the level of technologies that are in commercial service'' (EPACT 2005, section 402(a)). In February 2009, the Congress appropriated $3.4 billion to DOE for fossil energy research and development, with $800 million allocated to the CCPI program. CCPI's Round 3 seeks to address the challenge of meeting the United States' dynamic demand for electricity while decreasing emissions of CO_2 from coal-based power generation. This is done through financial assistance awards to industrial participants for demonstrations, at commercial scale and in commercial settings, of low-CO_2 emissions coal-based technologies that have opportunities for timely deployment in the power industry.

DOE's purpose is to provide financial assistance to projects that have the best chance of achieving the CCPI program's objectives as established by the Congress. Specifically, DOE's purpose and need for action is to demonstrate the commercial-readiness of CO_2 capture and geologic sequestration fully integrated with a power plant. The technical, environmental, financial and performance data generated from the design, construction, and operation of the polygen plant will provide a commercial reference plant for these technologies.

EIS Process

DOE published a Notice of Intent in the **Federal Register** on June 2, 2010 (75 FR 30800) announcing its plan to prepare an EIS and hold a public scoping meeting. DOE held the scoping meeting in Odessa, Texas, on June 17, 2010. DOE considered all of the comments it received on the scope of the EIS and addressed them in the Draft EIS. On March 18, 2011, the U.S. Environmental Protection Agency (EPA) published a Notice of Availability of the Draft EIS in the **Federal Register** (76 FR 14969). On March 22, 2011, DOE published in the **Federal Register** (76 FR 15968) a Notice of Availability and announced a public hearing in Odessa on April 5, 2011. Comments were solicited at the public hearing and throughout the 45-day public comment period, which ended May 2, 2011.

Comments on the Draft EIS included:

- Proposed options to use municipal waste water and the proposed Fort Stockton Holdings water supply pipeline;
- Possible changes in discharges to Monahans Draw and salt loading due to discharge to the draw;
- The need to reduce the project's demand for potable water in light of the limited regional supply;
- The choice of West Texas as the site for a coal-fueled electricity generating plant instead of a site near either the supply of coal or the demand for the electricity;
- The market for electricity and the economic viability of the project;
- DOE's proposed funding of clean coal projects instead of projects using renewable resources;
- The need for a comprehensive CO_2 emissions assessment that extends through the EOR process to the end uses of produced petroleum products;
- Increased railroad traffic and associated coal dust; and
- The existence of additional foreseeable projects that should be included in the cumulative effects section of the EIS.

In the Final EIS, DOE considered and, as appropriate, responded to comments on the Draft EIS. The EPA published a Notice of Availability for the EIS in the **Federal Register** on August 5, 2011 (76 FR 47579). In addition to responding to comments on the Draft EIS, the Final EIS included new information related to, among other things, treatment of process water and the disposal of waste water by two additional options: evaporation ponds and deep well injection.

Decision

DOE has decided to proceed with $450 million in financial assistance (*i.e.,* cost-shared funding) under the terms of the cooperative agreement with Summit for the design, construction and demonstration of the TCEP.

Basis of Decision

DOE's decision was reached after considering the potential environmental impacts presented in the EIS, the practicable options for mitigation of the impacts, the importance of achieving the objectives of programmatic and legislative mandates (CCPI, EPACT 2005, and ARRA) and other information. Specifically, the project meets or exceeds the three primary objectives of CCPI Round 3 and satisfies the programmatic and legislative objective of demonstrating the technical practicality of producing electricity and other products from coal while capturing and beneficially using most of the CO_2 produced from coal gasification.

Furthermore, the project will create jobs and modernize the nation's infrastructure, meeting the objectives of the ARRA. During most of the construction period, the gross domestic product (GDP) in the region of influence (Ector, Midland, Crane and Ward Counties) is estimated to increase by more than 0.4 percent; during the final year of construction it will increase by an estimated 0.67 percent. During plant operations, regional GDP will increase

by about 0.16 percent, representing a long-term benefit. Property taxes paid by the project are expected to total $14.5 million annually during the operations phase, after deducting anticipated abatements and tax reliefs. Income and sales taxes related to the project will further benefit local governments.

Summit estimates that an average of 650 construction workers will be needed to build the plant with a peak at perhaps 1,500 workers. TCEP's operational work force is expected to be approximately 150 workers. Accounting for indirect and induced jobs, the total number of jobs resulting from the project will average about 1,000 during construction and 300 during operations.

This decision incorporates all practicable means to avoid or minimize environmental, social, or economic harm. DOE plans to verify the implementation of appropriate avoidance and mitigation measures.

Mitigation

As a condition of its decision to provide funding for the design, construction and operation of the project, DOE is imposing requirements that will avoid or minimize the environmental impacts of the project. These conditions are described below. Under the terms of the cooperative agreement, DOE requires Summit to comply with applicable Federal, state and local government laws, regulations, permit conditions, and orders. Mitigation measures beyond those specified in permit conditions enforceable by other Federal, state and local agencies are addressed in this ROD and, as appropriate, will be set forth in a Mitigation Action Plan (MAP) as required by 10 CFR 1021.331. The MAP will further detail the mitigation measures, explaining how they will be planned, implemented, monitored and reported. These mitigation requirements are a condition for continued DOE funding.

DOE will ensure that commitments in this ROD (as further detailed in the MAP) are met through management of the cooperative agreement, which makes the conditions in the ROD contractually enforceable. DOE will make the MAP available for public inspection via postings on the DOE and NETL Web sites.

During project planning, Summit incorporated various mitigation measures and anticipated permit requirements. The analyses in the EIS assumed that these measures would be in effect. These measures are identified in Tables S2–7 and 2–8 of the EIS as commitments made by Summit and are incorporated into this ROD as conditions for DOE's financial assistance under the cooperative agreement.

Mitigations identified in this ROD shall be made a term and condition for future ownership or management of the TCEP by any other parties during the period of performance under the cooperative agreement.

After carefully reviewing the EIS, the comments received on the EIS and proposed project, and the current events in the region, DOE requires the following mitigation measures as a condition of its decision:

(1) Summit shall design and construct the TCEP to capture at least 90 percent of the carbon in the fossil fuels when operating under normal conditions, and Summit shall use best efforts to achieve at least a 90 percent capture rate during the demonstration period.

(2) Summit shall develop jointly with the Texas Bureau of Economic Geology and DOE a plan for monitoring, verification and accounting (MVA) of CO_2 sequestered through EOR. The MVA will be implemented by third-party buyers of the CO_2. Contracts established between Summit and these buyers (or the field operators who ultimately use the CO_2) shall make the implementation of the MVA plan a term and condition of the contract and shall, as appropriate, involve the Texas Bureau of Economic Geology and the Texas Railroad Commission in the certification of the sequestration of CO_2 via EOR. MVA reports submitted to the State of Texas shall also be submitted to Summit and to DOE (via Summit).

(3) Summit shall not use the proposed Fort Stockton Holdings waterline as a primary water supply for the TCEP. If constructed, this waterline may be used as a backup supply to temporarily provide water to the TCEP when the primary water supply is not in service.

(4) Summit shall not enter into contracts whereby waste water discharge into Monahans Draw would increase by more than 0.75 million gallons per day, as an annual average, and 6 million gallons per day as a daily maximum, as a result of the TCEP.

(5) The TCEP's power island shall be designed, constructed and operated with dry cooling towers. If this is found to be technically infeasible, then a hybrid cooling system (or a wet cooling assist) may be used. A wet cooling system is acceptable for the chemical plant component of the TCEP.

(6) If the TCEP uses solar evaporation ponds, Summit shall plan, design, and construct any high salinity ponds to be ready for installation of bird deterrent netting. Before completing final design on solar evaporation ponds, Summit shall prepare, jointly with DOE and governmental agencies with regulatory jurisdiction, a plan for bird deterrence, monitoring and reporting; and this plan shall be implemented during the design, construction and operation of the solar evaporation ponds.

(7) If Summit chooses to dispose of desalination reject water by deep well injection, in addition to complying with the terms and conditions of a permit under Texas's Underground Injection Control Program, Summit shall install a well near the bottom of the zone of potentially potable ground water (*i.e.,* ground water with a total dissolved solids concentration of less than 10,000 milligrams per liter) and monitor this water for increases in total dissolved solids and hydrocarbons as indicators of possible leakage of more deeply injected brine reject water or displaced native fluids. It may be feasible to use the same well for both monitoring and for supplying potable water to the polygen plant. Before completing final design on a system for deep well injection of brine reject water, Summit shall prepare, jointly with DOE and government agencies with regulatory jurisdiction, a plan for monitoring well design, construction, monitoring and reporting; and this plan shall be implemented during the design, construction and operations of the system for deep well injection.

(8) Before land disturbance at the plant site and along the utility corridors, Summit shall survey areas to be disturbed and undertake measures to protect wetlands, waterways (including non-jurisdictional waters), playa lakes, rare species (*e.g.,* the sand dune lizard, *Sceloporus arenicolus,* Federal candidate for listing) and critical habitats (*e.g.,* the Shinnery Oak Sand Dune habitat), and state-listed rare species (particularly the Texas horned lizard), as specified in the MAP. As appropriate, Summit shall consult with the U.S. Fish and Wildlife Service and the Texas Parks and Wildlife Department regarding special natural communities and features, as well as rare species and their habitats.

(9) To reduce impacts to species protected under the Migratory Bird Treaty Act, ground disturbing activities in areas of potential breeding habitat shall be avoided during the breeding and nesting season (March 1 through July 31). If this seasonal avoidance is not practicable, a qualified biologist shall survey the potentially affected area prior to any ground disturbing activities to determine if nesting is underway; and buffer areas shall be established as needed to protect eggs and young birds until they fledge. Owls and hawks may

nest in this area at other times of year. Surveys shall be conducted for owl and hawk nests, and buffer areas shall be established around active nests. If a power transmission line route crosses or is located near a water body or playa lake bed, the adjacent section of the line shall have line markers to reduce the potential for bird collisions. To prevent electrocution of perching raptors and to reduce power outages and maintenance, Summit shall consider the use of various protection measures such as adequate line spacing, perch guards, and insulated jumper wires.

(10) For linear facility routes chosen by Summit, phase I cultural resource surveys (including archaeological and paleontological surveys), along with consultations with the Texas State Historic Preservation Officer and DOE, shall be completed for segments not previously surveyed but for which surveys are warranted. Further consultation with the State Historic Preservation Officer for any unforeseen areas of construction or ground disturbance not included within the EIS shall be completed before construction starts to determine the need for further cultural resource investigations and any appropriate mitigation measures.

(11) For any pipeline crossings of Monahans Draw, Summit shall first consider the practicability of pipeline installation beneath the streambed by directional drilling. If trenching is chosen as the method of installation of pipeline, Summit shall seek to use crossing locations and construction techniques whereby impacts to aquatic life, vegetation and land surface features along the draw would be minimized; and Summit shall use land surface reconstruction, erosion controls, and revegetation (with native species) to stabilize and restore the affected floodplains, stream banks, stream beds, and vegetation.

(12) Where vegetative ground cover remains disturbed or soil remains exposed after project-related construction activities, Summit shall strive to achieve beneficial results in terms of erosion control, land stabilization, long-term vegetative cover and habitat improvement through revegetation, landscaping and other techniques as appropriate. Plantings of vegetation shall use species that are native, adaptable to the planting location, beneficial to wildlife, drought tolerant, and helpful with water conservation. Where practicable, grass re-seedings or plantings shall use only native species, usually in a mixture of grasses and forbs appropriate to address potential erosion problems and provide long-term cover.

(13) Summit shall prepare annual reports during the term of the cooperative agreement that document the operations and corresponding air emissions from the TCEP. Annual reports shall include summary information on the TCEP's emissions of criteria pollutants, mercury and other toxic pollutants of concern, and CO_2. These reports shall indicate the performance and emissions of the TCEP during normal operations. If air emissions data are collected during periods of operation outside normal steady-state conditions, this information also shall be summarized in the report.

(14) To reduce visual impacts associated with polygen plant structures and facilities, including exposed portions of linear facilities, DOE recommends that Summit choose, where appropriate, finish coat colors for exterior surfaces that reduce the form, color and line contrasts between the surrounding landscape and the exteriors of buildings and structures. Chosen colors should be slightly darker than the surrounding landscape to achieve optimal benefit. This choice of color would not apply where regulation, safety, service, material type, or other reasons dictate the choice of other colors or no paint.

Summit will conduct further resource assessments as the project planning and design continues. If there are substantial changes in the TCEP proposal or significant new information relevant to environmental concerns, as described in 40 CFR 1502.9(c)(1), DOE will prepare a supplemental EIS. If it is unclear whether an EIS supplement is required, DOE will prepare a Supplement Analysis, in accordance with 10 CFR 1021.314(c), to support the determination. DOE will make Supplement Analyses available to the public and to regulatory agencies with jurisdiction for 30 days of review and comment prior to DOE determining whether a supplemental EIS is required.

Project Description and Location

The project will be located approximately 15 miles (mi) (24 kilometers) southwest of the city of Odessa in Ector County, Texas. Summit will build the polygen plant on a 600-acre (243-hectare) site adjacent to the community of Penwell and north of Interstate Highway 20 (I–20) along a Union Pacific Railroad line. Summit chose this site primarily because of its proximity to an existing CO_2 market, a connection point to a CO_2 pipeline network, and multiple oil fields currently performing or suitable for CO_2 floods.

The project's linear facilities include one or two electric transmission lines to connect the plant with one or both of the nearby power grids; process water supply pipelines; a natural gas pipeline; a pipeline for captured and compressed CO_2; one or two access roads; and a rail spur.

The TCEP will employ integrated gasification combined-cycle (IGCC) technology. Gasification is the process of converting coal into a fuel called synthesis gas (syngas). A combined-cycle electric power plant is one that uses both a gas turbine-generator (similar to a jet aircraft engine) and a steam turbine-generator (which uses steam produced by exhaust heat from the gas turbine-generator) to produce more electricity than would be produced by a boiler and conventional steam turbine-generator alone. Combining (integrating) the gasification process with a combined-cycle power plant is known as IGCC.

This polygen plant will include CO_2 capture and compression with transport of the CO_2 off-site for geologic sequestration through EOR. Specifically, the plant will have an air separation unit, a coal gasification system (with two operating gasifiers), a syngas cleanup system, a mercury (Hg) removal filter, an acid gas scrubber (for sulfur species and CO_2), a CO_2 compressor system, a sulfuric acid (H_2SO_4) production plant, a gas turbine-generator, a heat recovery steam generator (HRSG), a steam turbine-generator, and a urea production plant. The linear facilities will convey the outputs and inputs of the polygen plant to and from existing infrastructure.

Summit's TCEP will generate up to 400 megawatts (MW), of which 130 to 213 MW (approximately 1.0 to 1.7 billion net kilowatt-hours of electricity per year) will be available to the electricity grid. In addition, the plant will be designed to capture, as CO_2, 90 percent or more of the total carbon in the fossil fuels used by the plant under typical operating conditions. Summit will capture up to 3 million tons (2.7 million metric tonnes) of CO_2 annually. Approximately 2.5 to 3.0 million tons (2.3 to 2.7 million metric tonnes) of the captured CO_2 will be sold under commercial contracts and subsequently injected into partially depleted oil reservoirs where it will be used to extract more oil. In addition, the plant will produce urea for sale as fertilizer. Products from the gasification process (argon, H_2SO_4, and inert slag) will also be sold on the commercial market.

Summit received a financial assistance award in Round 3 of DOE's CCPI program and qualified for

investment tax credits under Internal Revenue Code (IRC) section 48A, Qualifying Advanced Coal Project. Summit intends to seek tax credits under IRC section 45Q, Credit for Carbon Dioxide Sequestration. However, most of TCEP's funding will consist of owner-invested equity and debt obtained in private capital markets.

DOE's Proposed Action

DOE's Proposed Action, as described in the EIS, is to provide a total of approximately $450 million in financial assistance for Summit's TCEP through a cooperative agreement. The financial assistance would be provided on a cost-share basis for the planning, design, construction, and demonstration-phase testing and operation of the project. Under the terms of the agreement, DOE has already made available approximately $48 million on a cost-share basis for the project's definition phase, which includes completion of the NEPA process.

Alternatives

The Congress directed DOE to pursue the goals of the CCPI by providing financial assistance to projects owned by non-Federal sponsors and using coal for at least 75 percent of the project's fuel requirement. This approach places DOE in a much more limited role than if it were the owner and operator of the project. Here, the purpose and need for DOE action is defined by the CCPI program and the ARRA. Given that CCPI's programmatic purposes and needs are defined by legislation, the reasonable alternatives available to DOE, prior to selection of this project, were the other projects submitted for DOE's consideration in response to the FOA and that were determined to be responsive to the FOA's requirements. All projects that were deemed responsive to the FOA were analyzed in an environmental critique pursuant to 10 CFR 1021.216, which establishes a specific NEPA process for competitive awards of financial assistance and contracts. A synopsis of the environmental critique is included in Appendix B of the EIS.

After DOE selects a project, the reasonable alternatives become: (1) The project as proposed by the applicant, (2) alternatives or options still under consideration by the applicant or that are within reasonable confines of the project as proposed (*e.g.,* the particular location of the plant on the parcel of land proposed for the project), and (3) the ''no action'' alternative.

DOE issued the FOA for CCPI Round 3 in August 2008, and reopened it in June 2009 in response to the addition of ARRA funding to the CCPI program. Private sector participants submitted 38 proposals in response to the reopened solicitation. After an initial screening removed from further consideration those proposals that failed to meet the eligibility requirements, the remaining 25 responsive proposals were subjected to environmental review and consideration (during the selection process) in accordance with 10 CFR 1021.216. From these 25 proposals DOE selected three proposals representing diverse technologies and using a variety of coals to further the goals of the CCPI program. DOE selected the TCEP under the reopening of Round 3 because it would demonstrate IGCC power generation integrated with chemical production and CO_2 capture technologies in a commercial project.

Summit chose the site for its TCEP based on a selection process that it had completed prior to applying for DOE's financial assistance. Because of its desire to integrate IGCC technology with CO_2 capture, Summit focused its site selection efforts in Texas, which has both a regional market for CO_2 for use in EOR and existing infrastructure for transporting CO_2 to oil fields. Summit considered several sites in Texas, including Corpus Christi, Oak Grove, Big Brown, and two sites—Jewett and Odessa—that had been considered for DOE's FutureGen project. Summit ultimately selected the Odessa site primarily because of its proximity to an existing CO_2 pipeline and multiple oil fields where EOR is or may be used. The Odessa site also has close access to rail, natural gas, transmission lines, and sources of water, which the other sites lacked in varying degrees. The Odessa site enjoys significant community support for the TCEP.

Under the proposed action alternative, DOE assessed the potential environmental impacts associated with alternative water supplies, alternative routes for linear facilities, and options for certain plant sub-systems (*e.g.,* evaporation ponds versus deep well injection of reject water from the desalination of supply water) as described in the EIS. In identifying alternative routes for linear facilities, Summit considered selection factors such as using or paralleling existing rights of ways and avoiding developed areas and sensitive areas. In the EIS, DOE reviewed the potential environmental impacts of these various project alternatives still under consideration by Summit with the goal of deciding for each of Summit's alternatives whether any adverse consequences might be sufficiently objectionable that DOE would disallow the usage of that alternative in the TCEP as a condition for DOE's financial assistance.

No-Action Alternative

Under the No-Action Alternative, DOE would not share in the cost for detailed design, construction and a three-year demonstration phase of the TCEP. For purposes of analysis in the EIS, DOE considered the ''no-action'' alternative to be the same as the ''no-build'' alternative.

In the absence of financial assistance from DOE, Summit might choose to construct and operate the TCEP if it could obtain sufficient private financing. However, DOE believes this option is unlikely, because of the financial risks and costs of deploying a new power plant, especially one with IGCC technology integrated with CO_2 capture and sequestration. Without DOE participation, it is likely that the proposed project would not be built, environmental resources would remain in their current condition, and none of the impacts associated with the project would occur, whether adverse or beneficial (*i.e.,* no new construction, jobs, marketable products, resource use, land-use alterations, emissions, discharges, or wastes).

If the project were canceled, the proposed technologies of the TCEP (*e.g.,* commercial-scale IGCC integrated with CO_2 capture and geologic storage of CO_2 using EOR; the manufacture of urea from gasified coal) may not be implemented in the near term. Consequently, commercialization of these technologies may be delayed or may not occur because utilities and industries tend to use known and demonstrated technologies rather than new technologies. The no action alternative would not contribute to CCPI's goals of accelerating the commercial readiness of advanced multi-pollutant emissions control; improving combustion, gasification, and efficiency technologies; and demonstrating advanced coal-based technologies that capture and sequester CO_2 emissions.

Potential Environmental Impacts

In making its decision to provide continued financial assistance to the TCEP, DOE considered the environmental impacts of the proposed project and no-action alternative on affected resources. These include air quality and greenhouse gas emissions; climate; soils, geology, and mineral resources; ground water; surface water, floodplains and wetlands; biological resources; aesthetics; cultural resources; land use; socioeconomics and

community services; environmental justice; utility services; transportation; materials and waste management; human health, safety, and accidents; and noise and vibration. The EIS also examined potential incremental impacts of the TCEP in combination with other past, present, and reasonably foreseeable actions (*i.e.,* cumulative impacts). The following sections summarize the environmental impacts and mitigation measures described and analyzed in the Final EIS.

Air Quality

The TCEP will be categorized as a major source of air pollutants under Clean Air Act regulations because emissions of some criteria pollutants (NO_2, SO_2, CO, PM_{10}, and $PM_{2.5}$) will exceed 100 tons per year. Construction-related and operational emissions would not cause air quality to exceed either the Prevention of Significant Deterioration (PSD) increments or the National Ambient Air Quality Standards (NAAQS). However, ambient air concentrations of criteria pollutants could increase between 9 percent and 200 percent at the point of maximum ground level impact under certain weather conditions during plant operations. While the TCEP will capture for beneficial use at least 90 percent of the carbon as CO_2 in its fuels, annual emissions of CO_2 from the TCEP will reach 300,000 tons per year, and these emissions will contribute to global atmospheric concentrations of CO_2.

Plant-wide emissions of hazardous air pollutants will not exceed either the individual pollutant threshold (10 tons per year) or the combined pollutant threshold (25 tons per year). Maximum predicted concentrations for all identified compounds that could have a negative impact to human health were found to be below their respective effects screening limits for general public exposure, except for short-term exposures to coal dust on the plant site (which will not exceed industrial exposure criteria).

Although air quality impacts will be small, the TCEP will reduce emissions and impacts to the fullest extent practicable. As a condition of its decision, DOE requires reports on air emissions from the TCEP (see Mitigation).

Climate

Construction and operation of the TCEP will not cause measurable impacts on local, regional or global climate and meteorology. However, operations of the TCEP will contribute greenhouse gas emissions to the atmosphere. Annual emissions of CO_2 from the TCEP operations will range up to 300,000 tons per year, and these emissions will contribute to global atmospheric concentrations of CO_2. Small amounts of methane and other organic compounds (the TCEQ-issued air emissions permit limit equals 39.6 tons per year) will be emitted and will contribute to greenhouse gas effects.

The TCEP is designed to reduce its emissions of greenhouse gases (and precursors) to levels that are much lower than conventional power plants of equivalent gross generating capacity and lower than other advanced clean coal power plants that have been constructed and operated. DOE requires as a condition of its decisions that the TCEP be designed and constructed to capture at least 90 percent of the carbon in its fossil fuels (see Mitigation).

Soils, Geology and Mineral Resources

Soils will be disturbed as areas are prepared for construction. Disturbed soils will be protected from erosion and will be re-planted where practicable. Disturbance at the plant site will result in permanent removal or displacement of soils on up to 600 acres. Soil disturbance in utility corridors is expected to be temporary and will vary greatly depending on the options and routes selected, ranging from 132 to 1,032 acres (53.4 and 417.7 hectares) (assuming that the permanent rights-of-ways but not the temporary rights-of-ways will be fully disturbed). New transportation corridors connecting to the power plant site could require between 25.3 and 39.0 acres (10.2 and 15.8 hectares) of soil disturbance.

The CO_2 from the TCEP will be sold to ongoing EOR operations in the Permian Basin. This use of CO_2 in the basin is a well-established process that will serve as final sequestration for the CO_2 captured at the TCEP. Capture and sale of CO_2 from the polygen plant will promote the recovery of oil and gas in the Permian Basin, where average additional oil production is approximately 1.86 barrels of oil per ton of CO_2 injected. As a tertiary method of EOR, CO_2 floods help oil field operators recover another 8 to 16 percent of the original quantity of oil in the reservoir.

Because oil and gas are withdrawn from oil reservoirs as CO_2 is injected, fluid pressures within the reservoir would not be expected to build up to levels that would represent a substantial risk of seismic activity, displacement of native fluids into overlying strata, or migration of injected CO_2 into other strata. Abandoned oil wells typically present the most likely leakage routes in old oil fields, and these leaks can usually be identified and plugged. Over the long term, injected CO_2 would be trapped in the reservoirs that had previously trapped oil and natural gas through many millions of years. DOE requires as a condition of its decision that Summit monitor and verify the sequestration of TCEP's injected CO_2 (see Mitigation).

Ground Water

Supplies of non-potable (brackish or saline) ground water appear more than adequate in the region to meet TCEP's consumption rates for process (industrial) water. Although no adverse impacts are expected to occur if non-potable ground water is used, water conservation and use of a dry cooling system have been included as an integral part of the plant to minimize the potential for water supply impacts to the fullest extent practicable.

Aside from meeting the TCEP's needs for process water, Summit is considering installation of an on-site well into the Dockum Aquifer to serve the plant's potable water needs. Operational demand will be approximately 4,500 gal (17,034 L) per day based on approximately 150 workers on-site. In Ector County, the quality of the Dockum Aquifer ranges from fresh to brackish. Although irrigation and public supply use is limited in Ector County, at least one resident in the adjacent community of Penwell currently relies on water from the same aquifer for residential and small-scale commercial use. Potential water quality effects on this adjacent well user will be estimated through testing of a newly drilled well on-site, if this option is further investigated for its potential to supply potable water to the TCEP.

The TCEP could affect ground water in several ways: (1) Project consumption from underground sources of drinking water, (2) displacement of fluids into underground sources of drinking water, (3) contamination due to spills, leaks, releases or leaching during construction and operations, and (4) diminished recharge due to alterations of the ground surface.

The consumption of potable water from ground water aquifers would constitute a significant impact if the TCEP were to use such sources for primary supply of process water. From the beginning, project planners were aware of the potential harms in using potable water for the plant's process water needs, so this type of water supply was disfavored.

The Edwards-Trinity (Plateau) Aquifer was considered as one of the options for water supply, using an existing well field located near the town

of Fort Stockton, Texas. This well field yields water of marginal quality for human consumption and the water would benefit from desalination to improve its acceptance for drinking water. Currently water from this field is being used for agricultural irrigation. The proposed Fort Stockton Holdings waterline would divert water currently used for irrigation to the cities of Midland and Odessa where it could be used for potable water supply.

If the Fort Stockton Holdings waterline were built, the TCEP could use approximately 10 percent of its capacity. Because no additional ground water would be withdrawn from the aquifer (beyond the current rate of pumping for agricultural irrigation) and because very little of the water currently used for irrigation recharges the Edwards-Trinity Aquifer, Fort Stockton Holdings' proposed waterline project, and TCEP's use of 10 percent of the waterline's capacity, would have no additional impact on the aquifer. The proposed Fort Stockton Holdings waterline is highly controversial and has been unable to obtain needed permits and approvals. Therefore, it is unlikely that this waterline would be built in time for the TCEP to use it as a primary water supply. DOE requires as a condition of its decision that the Fort Stockton Holdings water line not be used as a primary source of water (see Mitigation).

The Capitan Reef Complex Aquifer is a minor aquifer in West Texas that is approximately 25 miles to the west of the plant site. Summit proposed this aquifer as an option for the process water source. The aquifer generally contains poor quality water. Most of the ground water pumped from this aquifer in Texas is used for secondary oil recovery. A small amount is used for irrigation of salt-tolerant crops. Over the last 70 years, water levels in the aquifer have declined in some areas. The Oxy Permian pipeline system distributes brackish ground water from the Capitan Reef formation to water flood projects in the Permian Basin. The closest source of Oxy Permian water to the polygen plant site is a group of ground water wells near the town of Kermit, Texas.

The Oxy Permian system is not used at its full capacity, and demand for water for use in secondary oil recovery has been slowly declining. Because the amount of water pumped for the Oxy Permian pipeline has steadily decreased, the impacts of additional pumping for use as TCEP process water would be small. Usage of this water supply option would require the installation and use of a substantial desalination system at the TCEP plant site, with disposal of a substantial volume of desalination reject water (brine).

Summit also considered the Pecos Alluvium Aquifer in response to a suggestion submitted during the public comment period on the Draft EIS. This aquifer is of major regional importance and has been widely used for irrigation. In central Ward County, it is also used for municipal and industrial purposes. Production rates greatly exceed recharge rates and aquifer drawdown has approached 200 feet (61 meters) in some areas. The aquifer is also highly variable in production quality and quantity. If TCEP were to use this option, impacts to the aquifer's water quality and quantity would likely be significant within the region of the drawdown.

If deep injection wells are used for the disposal of waste water (whether brine water or industrial waste water), its injection could displace native fluids upward into underground sources of drinking water. The area of risk would be around the injection wells where fluid pressures could increase significantly in response to the injection. The extent of this area would be estimated after a test well is drilled by Summit to gather hydrologic information on each of the likely injection targets. If Summit chooses this option, DOE requires monitoring of changes in water quality in the deepest underground source of drinking water above the injection site (see Mitigation).

If additional municipal waste water, after treatment, would be disposed of into Monahans Draw as a result of the TCEP, there would be only a small risk of increased contamination of ground water beneath the draw. Permit limits on total dissolved solids (salinity) in water discharged into the draw will not be increased, but the volume of waste water discharged and salt loading could increase. DOE requires a limit on TCEP-related waste water discharges and salt loading to Monahan's Draw (see Mitigation).

Surface Water, Floodplains and Wetlands

At the TCEP site and along access roads, no surface water resources, floodplains, or wetlands are present and, therefore, no direct impacts to them are expected. Floodplains and wetland areas have been identified within pipeline corridors, with the following amounts of wetlands being subject to disturbance: WL1, up to 2.53 acres (1.0 hectares); WL3, up to 0.86 acres (0.35 hectares); and WL5, up to 1.29 acres (0.52 hectares). The options for installation of pipelines beneath wetlands and water bodies are trenching and directional drilling. The choice of installation technique would be made by Summit on a case-by-case basis after more information is gathered at each location. After construction is complete, pipelines will not further impact floodplains. For transmission lines, structures could be sited to avoid wetlands along these routes. Construction activities in corridors that have water bodies (WL1, WL3 and WL5) are likely to result in short-term, construction-related impacts such as increased turbidity, sedimentation, streambed disturbance, and stream-bank vegetation removal.

Under one option for primary supply of process water, municipal waste water from Midland would be processed through primary and secondary treatment by the Gulf Coast Authority's (GCA's) plant and then processed through micro-filtration or ultra-filtration devices before being piped to the TCEP for use. If this option is chosen by Summit, there would be an increase in effluent discharge to Monahans Draw from the GCA outfall as a result of accepting more waste water, on most days, than is required for the TCEP and as a result of disposal of the reject water. The draw would be dry most of the time if not for the discharges of treated municipal and industrial waste water that maintain ponds and wetlands on portions of the draw. The wetlands, although small, are among the largest and best in the area and are used by a variety of birds and other wildlife. The potential increase in GCA's discharge to Monahans Draw (1) would not contribute significantly to flooding events in downstream low-lying areas, (2) would make a small contribution to the existing salt loading in the draw, and (3) would further support and may slightly expand wetlands within the draw.

If Summit chooses the option to use Midland's municipal waste water, the forecasted average increase of 0.75-million gallons per day (2.8-million Liters/day) in GCA's discharge to Monahans Draw would represent a 27 percent increase over the current average discharge from the GCA outfall and may cause a small increase in the downstream extent of stream flow along the draw during dry periods and in the downstream extent of wetlands. Neither the average per day increase in GCA's effluent discharge, nor the infrequent full release of waste water received from Midland (6 million gallons per day) would represent a significant impact to flood flow volume, flood elevations, or flooding frequency in the downstream areas along Monahans Draw.

The increase in concentration of total dissolved solids in GCA's discharges would be negligible (dissolved salts would pass through the micro filtration or ultra filtration devices). However, if Summit chooses to use Midland's municipal waste water, there would be a small contribution to the existing salt loading in the draw because of the increase in the quantity of effluent.

Biological Resources

Land disturbance and usage at the TCEP site will result in the permanent loss of up to 600 acres (243 hectares) of the mesquite shrub and grassland vegetation community and associated habitat functions. Construction activities could result in the death of slow-moving terrestrial species not able to escape the path of construction equipment. Noise associated with construction could result in wildlife displacement and behavioral changes that could have minimal impacts on reproductive success. Noise associated with plant operations will have negligible long-term effects on wildlife, because the wildlife will become accustomed to it. Land at the plant site is suitable for the Texas horned lizard (*Phrynosoma cornutum*) (state listed, threatened) as well as 11 other state-listed rare species. DOE requires, as a condition of its decision, measures to protect listed species (see Mitigation).

Construction of the linear facilities will result in the permanent removal of 132 to 1,032 acres (53 to 418 hectares) of mesquite shrub and grassland community and associated habitat functions, based on the smallest and largest combinations of the linear facility options. An additional 246 to 949 acres (100 to 384 hectares) of habitat could be temporarily removed or disturbed during construction. Impacts to terrestrial species will be similar to those described above. DOE requires, as a condition of its decision, measures to protect listed species (see Mitigation).

At the polygen plant site up to 600 acres (243 hectares) of suitable habitat for scrubland-nesting migratory birds and their nests will be permanently removed. Introduced species (European starlings and house sparrows) commonly associated with development activities (*e.g.,* maintained landscaping, open trash receptacles) could encroach on the plant site and displace or out-compete native songbird species. Migratory birds could experience noise-related impacts. Additional habitat loss for migratory birds will occur from the construction and operation of the linear facilities. Furthermore, disturbance from access road construction and use could displace migratory birds from areas adjacent to these. Bird and bat mortalities due to collisions with transmission lines will also occur. DOE requires, as a condition of its decision, minimization of impacts to migratory birds (see Mitigation).

If Summit chooses to use solar evaporation ponds for the disposal of waste water, the ponds could attract waterfowl to them thereby exposing the birds to concentrated brine water, which could cause salt toxicosis and salt encrustation of feathers leading to bird deaths. Covering ponds with netting would be one option for deterring birds from contacting the brines. Others options exist for deterring birds, and these would be considered when Summit prepares a bird deterrence plan (see Mitigation).

Aesthetics

Visual impacts caused by the polygen plant were evaluated from a number of key observation points in the area. The plant, as viewed from most locations (including the Monahans Sandhills State Park) will have only minor impacts on the view shed. The view of the plant will be more dramatic from the crest of the escarpment to the east, especially as seen by motorists traveling west from Odessa on I–20.

During operations, the height and size of the plant structures and coal storage pile will create moderate, adverse, direct impacts as viewed from the crest of the escarpment to the east because of the strong form, color, and line contrasts with the surrounding landscape. Water vapor emitted from the cooling tower will increase the extent of visual intrusion.

Adverse impacts to night sky conditions could occur during both construction and operations due to the installation of high-intensity lighting within and around the site. Light reflected upward will create regionally visible light pollution and sky glow. Strobe lighting (if required by the Federal Aviation Administration) on the top of the taller plant structures will adversely affect night sky conditions by imposing high-intensity flashing lights that will be regionally visible.

Transmission line structures will adversely impact the view-shed because of their height and intrusive vertical form contrasts with the landscape and because they will be visible from major travel routes. Because of existing power lines, however, they will not become a focus of viewer attention.

Minor adverse impacts will occur during construction of pipelines because equipment and trenches will be visible and because vegetation will be cleared along rights-of-ways. Although pipelines will be buried, long-term impacts to aesthetics will occur because rights-of-ways will be maintained clear of larger vegetation.

Cultural Resources

Construction and operation of the TCEP are not anticipated to impact significant cultural resources; however, utility corridors have not been thoroughly investigated and could have resources that deserve protection. Near the plant site one historical complex or set of buildings, the Rhodes Welding Complex, is considered eligible for the National Register of Historic Places (NRHP). Changes to the setting will not affect its NRHP eligibility. DOE requires, as a condition of its decision, cultural resource surveys to be completed for options and linear facility routes tentatively chosen by Summit (see Mitigation).

Land Use

The plant site is currently used for ranching and oil and gas production, and these will be displaced on the 600-acre plant site by the TCEP. Existing subsurface rights will continue to be available for exploration and production of oil and gas. Operation of the polygen plant will not be incompatible with most of the surrounding land uses. However, the project will directly affect at least one and perhaps other nearby residential units in the mostly abandoned community of Penwell.

For the linear facilities, existing land uses will be briefly and temporarily affected by construction. During operations, impacts to land use will be limited to the rights-of-way. The rights-of-way land requirements vary by facility type, and the associated impacts will last for at least the life of the utilities. The linear facilities will be consistent with the intent of the zoning districts through which they pass. Generally, existing land uses will be expected to continue after the linear facilities are constructed.

Socioeconomics and Community Services

Impacts to local and regional population during construction will be minor because most workers will commute from nearby communities. Impacts to population during operations will be negligible because most of the 150 permanent workers will come from the local population, although some may come from outside the area. Existing housing and hotel supply will be adequate to meet demands during operations and most of the construction phase. Because TCEP workers will come primarily from the existing nearby

populations, no changes are anticipated in the demand for law enforcement, emergency response, health services, schools, and recreational opportunities in the region.

During most of the construction, GDP in the region of influence (Ector, Midland, Crane and Ward Counties) is estimated to increase by more than 0.4 percent. During the final year of construction, it will increase an estimated 0.67 percent. During operations, it will increase by about 0.16 percent, representing a long-term and beneficial impact for the region. Tax revenue from the TCEP will have a beneficial and long-term impact to the region as revenue will be redistributed to counties, which in turn will allocate and redistribute to local communities.

Environmental Justice

Construction and operation of the proposed project are not anticipated to have disproportionately high and adverse impacts on minority or low-income populations in the area around the TCEP. Ector County has a higher concentration of minority populations than the state as a whole, and many areas of the county have higher concentrations of low-income individuals and families. Minority and low-income populations were not identified in the immediate vicinity of the TCEP (*e.g.,* region of influence for operational noise). Project emissions are not expected to cause significant air quality impacts or exceed regulatory thresholds. Impacts to surface and ground water resources are not expected to be high. Construction-related traffic congestion and traffic noise would temporarily increase significantly in some road segments very near the plant site, but these impacts are not expected to be disproportionate. Noise generated by operations and construction of the project would be significant locally; however, these impacts would not be disproportionate on environmental justice populations.

In general, the project could disproportionally harm minority and low-income communities in regard to housing availability (primarily short-term housing, such as motels), utility rates, and safety issues associated with increased traffic, but these impacts are not expected to be high. Short-term beneficial impacts could include an increase in employment opportunities and higher wages during construction.

Utility Service

To accommodate the electricity generated by the TCEP, there may be a need for system upgrades associated with the electrical interconnection to either the Electric Reliability Council of Texas (ERCOT) grid or the Southwestern Power Pool (SPP) grid. The nature of the upgrades will be further defined as interconnection studies are completed. These upgrades could involve local installation of larger conductors, new power transmission line segments, and upgrades of other local system components.

Transportation

Several routes were considered as potential new access roads to the polygen plant site. One route is directly from the community of Penwell, linking FM 1601 to the plant site via an underpass beneath the railroad at the southern border of the plant. The other routes are from the east and northeast of the plant site, connecting either to FM 866 or an I–20 frontage road.

During the period of plant construction, local traffic will increase as a function of the employment levels at the plant site. Delays associated with merging traffic and increased percent of time spent following slow vehicles will affect the level of service (LOS) of each road to which a plant site access road may be connected. Construction activities will result in temporary localized traffic delays, and most impacts will occur during shift changes.

During TCEP operations, there will be an average of four additional 150-car unit-trains per week along the railroad (Union Pacific), amounting to a 3 percent increase over the existing rail traffic on this line. Under the peak urea production option, there would be an average of approximately six additional 150-car unit-trains per week along the railroad, amounting to a five percent increase in rail traffic. Neither option represents an increase that would exceed system capacity nor cause delay to existing railway operations. Because the loading and unloading of TCEP-related materials will occur on the railroad spur, no impacts to the railroad will occur.

Materials and Waste Management

No impacts will occur from the management of construction materials. Furthermore, no impacts will occur to the supply of construction materials as a result of the demand from the project. Operations materials will include coal, natural gas, process water, process chemicals, and commercially marketable products. No impacts from the management of these materials are expected. Plans for delivery, handling, and storage of operations materials will be in place before operations begin.

Human Health, Safety, and Accidents

During construction, Summit will follow established procedures to provide a safe and healthy environment for workers, contractors, visitors, and the community. Based on industry workplace hazard statistics, the TCEP construction workforce could experience 91.65 nonfatal, recordable incidents and 48.75 lost workdays. Statistics suggest that fatalities are unlikely (0.19 fatality) during the three-year construction period.

Design features and safety programs will be established by Summit to minimize hazards during operations of the TCEP and linear facilities. Based on industry workplace hazard statistics, over the life of the project the TCEP operations workforce could experience 158 recordable incidents, 122 lost workdays, and less than one fatality.

Adverse impacts to human health and safety, although unlikely, could result from various types of accidents or acts of sabotage and terrorism, ranging from small pipeline leaks to, in an extremely unlikely case, an explosion at the polygen plant. The greatest risks to human health and safety are associated with sudden, unconstrained releases of toxic gases, such as ammonia (NH_3) and hydrogen sulfide (H_2S). Exposure modeling of unmitigated releases using worst-case atmospheric conditions was used to evaluate the risks of various levels of harm. These analyses were made assuming no mitigations are used; therefore, these risks can be reduced with the appropriate measures, such as planning, design and engineering controls. While the probability of intentional acts like sabotage and terrorism cannot be easily predicted, the consequences could be similar to the accidents analyzed in the risk assessment.

During operations of the polygen plant, the risk of someone being killed by exposure to a toxic gas in the event of a release would vary depending on his location relative to the release. The risk per year ranges from one in 1,000 to one in 100,000,000 of being killed in the project area. Toxic substance hazards are dominated by the potential releases of ammonia gas from the pipeline leading from the ammonia synthesis unit to the urea synthesis plant, or through ammonia production or storage processes. Risks are greatest to those workers closest to the ammonia synthesis unit.

Noise and Vibration

During construction, equipment noise will be perceptible outdoors at the Penwell receptor locations north of I–

20; however, people south of I–20 will likely not hear a substantial increase in noise owing to existing noise from vehicles on I–20. Intermittent increases in noise will result from steam venting prior to and during plant startup and commissioning. Although this venting will briefly exceed acceptable Federal Transit Administration (FTA) levels for residential areas (there will be a series of short loud blasts over a two-week period), the FTA's commercial-area construction threshold levels will not be exceeded.

Construction of some linear facilities (WL3, TL5, TL6, NG1–NG3, and AR1) will likely create temporary, adverse noise impacts to residents where the proposed lines are located close to residential areas.

During polygen plant operations, several plant components (*e.g.,* generators, pumps, fans, vents, relief valves, coal delivery/handling system) will generate noise. This operational noise will exceed the EPA's 55 dBA Ldn outdoor noise threshold at the two closest noise-sensitive receptors in Penwell (exceeding the threshold by 6 and 4 dBA). Long-term indoor noise levels are expected to be in compliance with EPA health and safety guidelines.

Environmentally Preferred Alternative

From a local perspective, the no-action alternative is environmentally preferable because it would result in no changes to the existing environmental conditions. However, from a national perspective, DOE's Proposed Action is the environmentally preferred alternative because it could hasten the deployment of carbon capture and sequestration practices at power plants and other industrial facilities around the world in an effort to reduce greenhouse gas emissions that otherwise will occur with the continued combustion of fossil fuels, especially coal, in stationary facilities. In addition to demonstrating carbon capture from a power plant and sequestration of captured CO_2 through EOR, the TCEP will encourage faster deployment of several other technologies that, if widely deployed by industry, could help reduce environmental impacts: (1) Integrated gasification combined-cycle technology, which allows for the production of more electricity from a given quantity of coal compared to convention power plants; (2) polygeneration, which may allow for lower cost and more efficient production of electricity and various other products (including products made using captured CO_2, such as urea); (3) dry cooling, which greatly reduces water consumption or usage by various industrial processes; (4) zero liquid discharge or water reuse concepts, which help reduce water consumption and minimize the quantity of waste water.

Comments Received on the Final EIS

DOE received comments, both oral and written, from U.S. EPA's Region 6 on the Final EIS concerning the lack of identification of preferred alternatives and the need to further investigate potential impacts to resources in association with some of the options.

EPA's Region 6 found that DOE's revisions to the Draft EIS were generally improvements, but it remains concerned that a preferred alternative for each of the linear facilities was not identified in the Final EIS. Region 6 understood that Summit could not identify a preferred alternative for each of the linear facilities until additional investigations occur.

For the TCEP, DOE identified its preferred alternative in the Final EIS, which is to fund the project. Subject to the mitigations required by this ROD and given the information presented in the Final EIS, DOE has no preference among the options not dismissed from further consideration by this ROD. DOE finds all the remaining options to be equally acceptable, provided that Summit undertakes the mitigations required by this ROD.

EPA's Region 6 also requested that DOE make a commitment in the ROD that, if field investigations reveal that an option chosen by Summit has impacts greater than those identified in the EIS, DOE would prepare a supplemental analysis. EPA further requested that the supplement analysis be provided to all regulatory agencies, including the EPA, for review. DOE will gather additional information and, if that information reveals potential impacts that are not adequately addressed in the EIS, it will prepare a Supplement Analysis to assist DOE in determining whether a supplemental EIS is needed.

DOE also received comments in writing from the Texas Parks and Wildlife Department (TPWD) on the Final EIS concerning protection of wildlife and habitat.

TPWD recommended that DOE review TPWD's comments and recommendations submitted during the public scoping and comment periods as many of these remain applicable to the project described in the Final EIS. As requested, DOE has again reviewed these two submittals and has factored TPWD's previous comments and recommendations into this ROD, particularly in the section on Mitigation.

TPWD notes that because few water sources exist on or near the project site, resident and migratory birds may be attracted to the proposed evaporation ponds spanning 160 acres in this arid area. TPWD therefore recommends a bird deterrent system be developed for the evaporation ponds. In anticipation of this request, this ROD includes a requirement for a bird deterrent plan and the implementation of the plan, if Summit chooses to use solar evaporation ponds (see Mitigation). More specifically, this ROD requires that high salinity ponds be designed and constructed to be ready for the installation of netting. TPWD further asks that it be contacted to discuss specific details of a bird deterrent system. DOE and Summit will consult with TPWD during the development of the bird deterrent plan.

TPWD supports Summit's preferred option of using Midland's municipal waste water as a supply for the polygen plant. However, TPWD believes that waterline option WL1 appears to better minimize adverse impacts to surface waters than WL5 because it has fewer crossings of Monahans Draw. To minimize impacts to the draw, TPWD recommends that the TCEP use directional drilling rather than trenching for pipeline crossings regardless of the waterline route chosen. The EIS notes that trenching, if this method of pipeline installation is chosen, would include restoration procedures, such as stream bank stabilization and revegetation. Further site investigations into the technical feasibility, costs, and potential for adverse impacts would be completed before determining the exact stream crossing locations, method of pipeline installation at streambeds, and mitigation methods.

One individual submitted comments on the Final EIS. These comments encourage the use of desalinated brackish or brine ground water (particularly water co-produced with oil and gas) and provided an Internet address for an article on emerging desalination technologies that may cost less for waters produced from oil fields. The comments also suggest that Summit should consider a larger desalination system that could serve both the TCEP and some portion of the municipal water supply needs of Odessa. In response, Summit indicates that it is investigating various desalination systems and currently plans to size its system to meet the TCEP's needs assuming that brackish water from the Capitan Reef Complex Aquifer would be the source. Summit further indicates that it has engaged in preliminary discussions with representatives of the city of Odessa regarding the possibilities

for cooperation in the desalination of water.

Issued in Pittsburgh, Pennsylvania on this 22nd of September 2011.

Anthony V. Cugini,

Director, National Energy Technology Laboratory.

[FR Doc. 2011–25070 Filed 9–28–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14145–001]

Pacific Green Power, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, Denying Use of the Traditional Licensing Process, Commencement of Licensing Proceeding, Scoping, and Solicitation of Study Requests and Comments on the PAD and Scoping Document

a. *Type of Filing:* Notice of Request To Use the Traditional Licensing Process.

b. *Project No.:* 14145–001.

c. *Dated Filed:* July 25, 2011.

d. *Submitted by:* Pacific Green Power, LLC.

e. *Name of Project:* Two Girls Creek Hydroelectric Project.

f. *Location:* On Two Girls Creek River, in Linn County, Washington. The project occupies United States lands administered by the Forest Service.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. David G. Harmon, P.E., Pacific Green Power, LLC, P.O. Box 44, Sweet Home, Oregon 97386; phone: (541) 405–5236.

i. *FERC Contact:* Jennifer Harper at (202) 502–6136; or e-mail at *Jennifer.Harper@FERC.gov.*

j. Pacific Green Power, LLC filed its request to use the Traditional Licensing Process on July 25, 2011. With this notice, the Director of the Division of Hydropower Licensing denies Pacific Green Power, LLC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Oregon State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Pacific Green Power, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction from the applicant listed in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. With this notice, we are soliciting study requests, as well as comments on the PAD and Scoping Document 1 (SD1). All study requests, as well as comments on the PAD and SD1 should be sent to the address above in paragraph h. In addition, all study requests, comments on the PAD and SD1, requests for agency cooperator status and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission. Documents may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All filings with the Commission must include the project name and number, and bear the heading ''Study Requests,'' ''Comments on Pre-Application Document,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in commenting on the PAD must do so by November 22, 2011.

o. At this time, the Commission intends to prepare an Environmental Assessment (EA) on the project, in accordance with the National Environmental Policy Act, as determined by the issues identified during the scoping process. If an EIS is determined to be required for the project, the U.S. Army Corps of Engineers has requested to be a cooperating agency.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place indicated below. The daytime meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Dates: Tuesday, October 18, 2011,

Time: 1 p.m.–4 p.m.,

Place: Sweet Home Ranger District Office, 4431 Highway 20, Sweet Home, OR 97386.

Evening Scoping Meeting

Date: Tuesday, October 18, 2011,

Time: 6 p.m.–9 p.m.,

Place: Sweet Home Senior and Community Center, 880 18th Ave, Sweet Home, OR 97386.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov*, using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2, if needed, would include a revised process plan and schedule, as well as a list of issues, based on the scoping process.

Environmental Site Review

The potential applicant and Commission staff will conduct an environmental site review of the project on Wednesday, October 19, 2011, starting at 9:30 a.m. All participants should meet at meet no later than 9:30 a.m., at the parking lot adjacent to the west picnic area of Cascadia State Park, approximately 14 miles east of Sweet Home off Highway 20. A map of Cascadia State Park is available at *http://www.oregonstateparks.org/images/pdf/cascadia_map.pdf.* There will be an approximately 30-minute drive to the site from the meet-up point. All participants are responsible for their own transportation to the site. Anyone with questions about the site visit should contact Mr. David Harmon, at *dave@pacgreenpower.com* or at (541) 405–5236.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review, discuss, and finalize the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Dated: September 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25055 Filed 9–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8866–009]

Lynn E. Stevenson; Notice of Termination of License by Implied Surrender and Soliciting Comments and Motions To Intervene

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

a. *Type of Proceeding:* Termination of license by implied surrender.

b. *Project No.:* 8866–009.

c. Date Initiated: September 23, 2011 (notice date).

d. *Licensee:* Lynn E. Stevenson.

e. *Name and Location of Project:* The constructed 70-kilowatt (kW) Project No. 2 is located on an unnamed stream, which is a tributary of the Snake River in Gooding County, ID (T. 6 S., R. 13 E., sec. 18, lot 7, Boise Meridian, Idaho).

f. *Proceeding Initiated Pursuant to:* Standard Article 16 of the project's license and 18 CFR 6.4 (2011).

g. *FERC Contact:* Diane Murray, (202) 502–8838.

h. *Deadline for filing comments, protests, and motions to intervene:* October 23, 2011.

Comments, Motions to Intervene, and Protests may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's website under the ''eFiling'' link. Please include the project number (P–8866–009) on any documents or motions filed. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's website located at *http://www.ferc.gov/filing-comments.asp.*

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

i. *Description of Existing Facilities:* (1) An intake at elevation 2,810 feet; (2) a concrete transition box; (3) an 18-inch-diameter, 400-foot-long steel penstock; (4) a powerhouse containing a single generating unit with a rated capacity of 70 kW; (5) a tailrace discharging into the Snake River; (6) a 135-foot-long, 34.5-kV transmission line; and (7) appurtenant facilities.

j. *Description of Proceeding:*

Section 6.4 of the Commission's regulations, 18 CFR 6.4, provides, among other things, that it is deemed to be intent of a licensee to surrender a license, if the licensee abandons a project for a period of three years. In addition, standard Article 16 of the license for Project No. 8866 provides, in pertinent part:

> If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission * * *, the Commission will deem it to be the intent of the Licensee to surrender the license * * *

The Commission issued a minor license for the project in 1986 to Lynn E. Stevenson.[1] The project has not operated since a downstream landslide in 1993 and has been abandoned. On April 10, 2007, during the inspection of the project by the Portland Regional office, Commission staff noted that the project was not operable and had not been operated since the landslide in 1993. During a May 11, 2010 inspection, Commission staff noted damage to the powerhouse and to the equipment in the powerhouse from previous flooding. By letter of July 27, 2011 to the estate of Lynn E. Stevenson, Commission staff required the licensee to show cause why the Commission should not initiate a proceeding to terminate the license for the project based on the licensee's implied surrender of the licensee. The licensee did not respond.

To date, the licensee has not made the necessary repairs to resume operations at the project and the project is abandoned.

k. *Location of the Order:* A copy of the order is available for inspection and reproduction at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in

[1] 34 FERC ¶ 62,530 (1986). Mr. Stevenson died in 2003 and Black Canyon Bliss, LLC purchased the project lands and facilities from the estate of Lynn E. Stevenson. Neither the estate nor the current owners have requested a transfer of license; therefore, the license remains with the estate of Lynn Stevenson. The project has been mistakenly referred to as Project No. 8865 since 2004. The Secretary of the Commission corrected this oversight on July 18, 2011 with the issuance of a Notice of Change in Docket Numbers.

the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', and ''RECOMMENTATIONS FOR TERMS AND CONDITIONS'', as applicable, and the Project Number of the proceeding.

n. Agency Comments—Federal, states, and local agencies are invited to file comments on the described proceeding. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: September 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25054 Filed 9–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14239–000]

Mona North Pumped Storage Project; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 1, 2011, Mona North Pumped Storage Project, LLC, California, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Mona North Pumped Storage Project (Mona North Pumped Storage Project or Project) to be located on Old Canyon Stream, near the town of Mona, Juab County, Utah. The project affects federal lands administered by the Bureau of Land Management. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An underground powerhouse containing the pump-turbines and motor-generators; (2) a waterway between 7,600 and 15,800 feet long (depending on alternative configuration), including inlet/outlet structures at each reservoir, headrace tunnel, pressure shaft, buried penstock, and tailrace features connecting the upper reservoir, the underground powerhouse, and the lower reservoir; and (3) a transmission line connecting the underground powerhouse to the existing Mona substation.

The applicant is studying the following reservoir alternatives:

Alternative 1: (1) A single 340-foot-high by 1,800-foot-long, concrete-faced dam across Old Canyon (upper reservoir) having a total storage capacity of 18,000 acre-feet and a water surface area of 203 acres at full pool elevation of 5,874 feet above mean sea level (msl); (2) an approximately 7,600-foot-long water way connecting the upper reservoir to a lower reservoir located about 2,300 feet south of the existing Mona substation; (3) a 100-foot-high and 13,000-foot-long earthfill ring dike (lower reservoir) located just south of Mona, with a water surface area of 262 acres at full pool elevation of 5,222 feet msl.

Alternative 2: (1) A two dam construction (upper reservoir) located upstream of Right Fork and Old Canyon having a storage capacity of about 8,350 acre-feet and a water surface area of 152 acres at full pond elevation of 6,527 feet msl, one dam would be 285 feet high and 1,900 feet long, and the other dam would be 35 feet high and 800 feet long; (2) an approximately 15,800-foot-long waterway connecting the upper reservoir to a lower reservoir about 2,000 feet north of the existing Mona substation; and (3) a 60-foot-high and 13,000-foot-long, earthfill ring dike (lower reservoir) located north of the existing Mona substation, with a water surface area of 265 acres at full pool elevation of 5,153 feet msl.

Alternative 3: (1) A two dam construction (upper reservoir) located upstream of Right Fork and Old Canyon having a storage capacity of about 24,100 acre-ft and a water surface area of 238 acres at full pond elevation of 6,580 feet msl, one dam would be 400 feet high by 2,900 feet long and the other dam would be a 100 feet high by 3,600 feet long; (2) an approximately 7,700-foot-long waterway connecting the upper reservoir to a lower reservoir north of the existing Mona substation; and (3) 250-foot-high and 1,200-foot-long, earthfill ring dike (lower reservoir) located north of the existing Mona substation, with a water surface area of 182 acres at full pool elevation of about 5,996 feet msl.

The different configurations would depend on the best suited conditions, ranging from a 4 unit, 500 megawatts (MW) (4 units × 125 MW unit) configuration to a 4 unit, 1,000 MW (4 units × 250 MW unit) configuration allowing for 8 to 10 hours of continuous output. Interconnection would exist at the PacifiCorp/Rocky Mountain Power Mona Substation: Alternative 1 would require roughly 6,000 feet; Alternative 2 would require 10,000 feet; and Alternative 3 would require 14,000 feet of new transmission line. Interconnection voltage may be 230 or 500 kilovolts; and annual generation would be within 1,800 to 4,500 gigawatthours, depending on constructed option.

Applicant Contact: Mr. Nathan Sandvig, Mona North Pumped Storage Project, LLC c/o enXco Development Corporation, 517 SW., 4th Avenue, Suite 300, Portland, OR 97204; phone (503) 219–3166.

FERC Contact: Brian Csernak; phone: (202) 502–6144.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14239–000) in the docket number field to access the document. For

assistance, contact FERC Online Support.

Dated: September 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25056 Filed 9–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14240–000]

Mona South Pumped Storage Project; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 1, 2011, Mona South Pumped Storage Project, LLC, California, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Mona South Pumped Storage Project (Mona South Pumped Storage Project or Project) to be located within Wide Canyon, 4 miles southwest of Mona, Juab County, Utah. The project affects federal lands administered by the Bureau of Land Management. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An underground powerhouse containing the pump-turbines and motor-generators; (2) a waterway roughly 7,100 feet-long, including inlet/outlet structures at each reservoir, headrace tunnel, pressure shaft, buried penstock, and tailrace features connecting the upper reservoir, the underground powerhouse and the lower reservoir; (3) transmission line connecting the underground powerhouse to the proposed PacifiCorp/Rocky Mountain Power Clover Substation; (4) a two reservoir construction (upper reservoir), a 370 feet-long by 3,000 feet-long concrete-faced dam located within Wide Canyon bordered by Middle Ridge and Long Ridge having a storage capacity of about 20,400 acre-feet and a water surface area of 218 acres at full pool elevation of 6,480 above mean sea level (msl); (5) a 110 foot-high and 13,000 feet-high, earthfill ring dike (lower reservoir) with a water surface area of about 261 acres Full pool elevation 5,880 feet msl; (6) location of lower reservoir and length of water-way connection will be determined later to ensure efficiency; (7) optimization of generation and energy storage ranging from a 4 unit, 500 megawatts (MW) (4 units × 125 MW unit) to a 4 unit, 1,000 MW (4 units × 250 MW unit) allowing for 8 to 10 hours of continuous output; (8) Project's interconnection at this new substation would require roughly 5 mile-long transmission line connecting powerhouse to the substation, which my be one or two circuts. Interconnection voltage may be 230 or 500 kilovolts; and (9) annual generation would be within 1,800 to 4,500 gigawatthours depending on constructed option.

Applicant Contact: Mr. Nathan Sandvig, Mona North Pumped Storage Project, LLC c/o enXco Development Corporation, 517 SW 4th Avenue, Suite 300, Portland, OR 97204; phone (503) 219–3166.

FERC Contact: Brian Csernak; phone: (202) 502–6144.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14240–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25057 Filed 9–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently

received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. ER07–86–018, ER07–88–018; ER07–92–018	9–15–11	Donald Patton.[1]
2. P–11858–002/004, ER08–654–000, ER06–278–000	9–20–11	David Kates.
Exempt:		
1. CP10–480–000	9–20–11	Hon. Claire McCaskill.
2. CP10–480–000	9–8–11	Hon. Patrick J. Toomey.
3. DI10–9–000	9–12–11	Hon. Joyce A. Maker.
4. DI10–9–000	9–12–11	Linda S. Pagels-Wentworth.
5. Project No. 459–000	9–21–11	Hon. Blaine Luetkemeye, *et al.*
6. Project No. 459–000	9–9–11	Hon. Claire McCaskill. Hon. Roy Blunt.
7. Project No. 2149–000	9–21–11	Ron Walter. Keith W. Goehner. Doug England.
8. Project No. 13351–000	9–23–11	Joseph Adamson.[2]

[1] Record of telephone call.
[2] Teleconference Summary.

Dated: September 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25053 Filed 9–28–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R05–OAR–2011–0468; FRL–9473–1]

Adequacy Status of the Ohio Portion of the Huntington/Ashland Submitted Annual Fine Particulate Matter Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have made insignificance findings through the transportation conformity adequacy process, under the Clean Air Act, for directly emitted fine particulate matter ($PM_{2.5}$) and oxides of nitrogen (NO_X) in the Ohio portion of the Huntington/Ashland WV–KY–OH area. Ohio submitted the insignificance findings with the redesignation and maintenance plan submittal on May 4, 2011. As a result of our findings, the Ohio portion of the Huntington/Ashland area is no longer required to perform a regional emissions analysis for either directly emitted $PM_{2.5}$ or NO_X as part of future $PM_{2.5}$ conformity determinations for the 1997 annual $PM_{2.5}$ air quality standard.

DATES: These findings are effective October 14, 2011.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Control Strategies Section, Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656, *morris.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we'', ''us'' or ''our'' is used, we mean EPA.

Background

Today's notice is simply an announcement of findings that we have already made. On August 11, 2011, EPA Region 5 sent a letter to the Ohio Environmental Protection Agency stating that we have made insignificance findings, through the adequacy process, for $PM_{2.5}$ and NO_X for the Ohio portion of the Huntington/Ashland area, as the state had requested in its redesignation and maintenance plan submittal. Receipt of the submittal was announced on EPA's transportation conformity Web site. No comments were received. The findings letter is available at EPA's conformity web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they conform. Conformity to a State Implementation Plan (SIP) indicates that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). We have described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004 preamble, starting at 69 FR 40038, and we used the information in these resources in making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and it should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

The findings are available at EPA's transportation conformity *Web site: http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Authority: 42 U.S.C. 7401–7671q.

Dated: September 19, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–25080 Filed 9–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9473–3]

Proposed CERCLA Administrative Past Cost Recovery Settlement; IUNA, Inc. aka IU North America, Inc., Mine 2028 Site, Brazil, IN, SF Site #B5KK

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Mine 2028 site in Brazil, Clay County, Indiana with the following settling party: IUNA, Inc., also known as IU North America, Inc. The settlement requires the settling party to pay $100,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the EPA will receive written comments relating to the settlement. The EPA 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. The EPA's response to any comments received will be available for public inspection at EPA's Record Center, U.S. EPA, Room 714, 77 West Jackson Boulevard, Chicago, IL 60604.

DATES: Comments must be submitted on or before October 31, 2011.

ADDRESSES: The proposed settlement is available for public inspection at EPA's Record Center, Room 714, U.S. EPA 77 West Jackson Boulevard, Chicago, IL. A copy of the proposed settlement may be obtained from Mr. Jerome Kujawa U.S. EPA–ORC (C–14J), 77 West Jackson Blvd, Chicago, IL 60604 or *kujawa.jerome@epa.gov* Comments should reference the Mine 2028 Site in Brazil, Indiana and EPA Docket No. V–W–11–C–977 and should be addressed to Mr. Jerome Kujawa.

FOR FURTHER INFORMATION CONTACT: Mr. Jerome Kujawa, U.S. EPA Office of Regional Counsel (C–14J), 77 West Jackson Blvd., tel. #(312)-886–6731 or *kujawa.jerome@epa.gov*.

Dated: September 13, 2011.

Richard C. Karl,

Director, Superfund Division, U.S. EPA Region 5.

[FR Doc. 2011–25109 Filed 9–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9473–2]

Settlement Agreements for Recovery of Past Response Costs; Granite Timber Post and Pole Site, Philipsburg, Granite County, MT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and Request for Public Comment.

SUMMARY: In accordance with the requirements of Section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i)(1), notice is hereby given of two Settlement Agreements under Section 122 (h)(1) of CERCLA, 42 U.S.C. 9622 (h)(1), between the United States Environmental Protection Agency (EPA) and Margery Metesh (Settling Party) and Mark Metesh (Settling Party), regarding the Granite Timber Site (Site), located 5 miles south of Philipsburg and 0.5 miles west of Montana Highway 10A in Granite County, Montana. The Settlement Agreements propose to compromise a claim the United States has at this Site for Past Response Costs, as those terms are defined in the Settlement Agreements. Under the terms of the Settlement Agreements, the EPA and the Settling Parties agree that the Settling Parties have no ability to pay and the Settling Parties agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site. Additionally, Margery Metesh (Settling Party) agrees to file a deed record notice concerning a building on a small portion of the Site property. In exchange, the Settling Parties will be granted a covenant not to sue under section 107(a) of CERCLA, 42 U.S.C. 9607(a), with regard to reimbursement of Past Response Costs.

Opportunity for Comment: For thirty (30) days following the publication of this notice, the EPA will consider all comments received and may modify or withdraw its consent to that portion of the Settlement Agreement, if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The EPA's response to any comments received will be available for public inspection at the Superfund Record Center, EPA Region 8, 1595 Wynkoop Street, 3rd Floor, in Denver, Colorado.

DATES: Comments must be submitted on or before October 31, 2011.

ADDRESSES: The Settlement Agreements and additional background information relating to the settlement are available for public inspection at the Regional Records Center, EPA Region 8, 1595 Wynkoop Street, 3rd Floor, in Denver, Colorado. Comments and requests for a copy of the Settlement Agreement should be addressed to Virginia Phillips, Enforcement Specialist (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–1129, and should reference the Granite Timber Site in Philipsburg, Montana.

FOR FURTHER INFORMATION CONTACT: Virginia Phillips, Enforcement Specialist, (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6197.

It Is So Agreed:

Andrew M. Gaydosh,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region 8.

[FR Doc. 2011–25082 Filed 9–28–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, October 4, 2011 at 10 a.m.

PLACE: 999 E. Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2011–25311 Filed 9–27–11; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies; Correction

This notice corrects a notice (FR Doc. 2011–24388) published on page 58812 of the issue for Thursday, September 22, 2011.

Under the Federal Reserve Bank of Philadelphia heading, the entry for Polonia MHC, Huntington, Valley, Pennsylvania, is revised to read as follows:

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Polonia MHC,* Huntingdon Valley, Pennsylvania; to convert to stock form and merge with Polonia Bancorp, Inc., Baltimore, Maryland, which proposes to become a savings and loan holding company by acquiring Polonia Bank, Huntingdon Valley, Pennsylvania.

Comments on this application must be received by October 17, 2011.

Board of Governors of the Federal Reserve System, September 26, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–25093 Filed 9–28–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. AHRQ also announces renaming of the scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Healthcare Research Training (HCRT).

Date: October 13–14, 2011 (Open from 8 a.m. to 8:15 a.m. on October 13 and closed for remainder of the meeting).

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

2. *Name of Subcommittee:* Healthcare Effectiveness and Outcomes Research (HEOR).

Date: October 18–19, 2011 (Open from 8:30 a.m. to 8:45 a.m. on October 18 and closed for remainder of the meeting).

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

3. *Name of Subcommittee:* Health Systems and Value Research (HSVR).

Date: October 19–20, 2011 (Open from 8:30 a.m. to 8:45 a.m. on October 19 and closed for remainder of the meeting).

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

4. *Name of Subcommittee:* Health Information Technology Research (HITR).

Date: October 20–21, 2011 (Open from 8:30 a.m. to 8:45 a.m. on October 20 and closed for remainder of the meeting).

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

5. *Name of Subcommittee:* Healthcare Safety and Quality Improvement Research (HSQR).

Date: November 1–2, 2011 (Open from 8 a.m. to 8:15 a.m. on November 1 and closed for remainder of the meeting).

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Suite 2000, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: September 14, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–25029 Filed 9–28–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From HPI–PSO

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of delisting.

SUMMARY: HPI–PSO: AHRQ has accepted a notification of voluntary relinquishment from the HPI–PSO, a component entity of Healthcare Performance Improvement, LLC, of its status as a Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41, 42 U.S.C. 299b–21—b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR Part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, including when a PSO chooses to voluntarily relinquish its status as a PSO for any reason.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12 midnight ET (2400) on August 31, 2011.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Diane Cousins, RPh., Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (*toll free*): (866) 403–3697; Telephone (*local*): (301) 427–1111; TTY (*toll free*): (866) 438–7231; TTY (*local*): (301) 427–1130; *E-mail: pso@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs. AHRQ has accepted a notification from the HPI–PSO, a component entity of Healthcare Performance Improvement, LLC, PSO number P0073, to voluntarily relinquish its status as a PSO. Accordingly, the HPI–PSO, a component entity of Healthcare Performance Improvement, was delisted effective at 12 midnight ET (2400) on August 31, 2011.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: September 19, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–25027 Filed 9–28–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From Illinois PSO

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of delisting.

SUMMARY: Illinois PSO: AHRQ has accepted a notification of voluntary relinquishment from the Illinois PSO of its status as a Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41, 42 U.S.C. 299b–21—b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR Part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, including when a PSO chooses to voluntarily relinquish its status as a PSO for any reason.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12 Midnight ET (2400) on July 20, 2011.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Diane Cousins, RPh., Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (*toll free*): (866) 403–3697; Telephone (*local*): (301) 427–1111; TTY (*toll free*): (866) 438–7231; TTY (*local*): (301) 427–1130; *E-mail: pso@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs. AHRQ has accepted a notification from the Illinois PSO, PSO number P0071, to voluntarily relinquish its status as a PSO. Accordingly, the Illinois PSO was delisted effective at 12 Midnight ET (2400) on July 20, 2011.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: September 19, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–25028 Filed 9–28–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From the Patient Safety Group

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Delisting.

SUMMARY: *HPI–PSO:* AHRQ has accepted a notification of voluntary relinquishment from The Patient Safety Group of its status as a Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41, 42 U.S.C. 299b–21—b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR Part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, including when a PSO chooses to voluntarily relinquish its status as a PSO for any reason.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12 Midnight ET (2400) on September 7, 2011.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Diane Cousins, RPh., Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (*toll free*): (866) 403–3697; Telephone (*local*): (301) 427–1111; TTY (*toll free*): (866) 438–7231; TTY (*local*): (301) 427–1130; *E-mail: pso@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act.

AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs. AHRQ has accepted a notification from The Patient Safety Group, PSO number P0016, to voluntarily relinquish its status as a PSO. Accordingly, The Patient Safety Group was delisted effective at 12 Midnight ET (2400) on September 7, 2011.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: September 19, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–25026 Filed 9–28–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–0530]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments must be received within 60 days of this notice.

Proposed Project

EEOICPA Dose Reconstruction Interviews and Forms—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

On October 30, 2000, the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384–7385) was enacted. This Act established a federal compensation program for employees of the Department of Energy (DOE) and certain of its contractors, subcontractors and vendors, who have suffered cancers and other designated illnesses as a result of exposures sustained in the production and testing of nuclear weapons.

Executive Order 13179, issued on December 7, 2000, delegated authorities assigned to ''the President'' under the Act to the Departments of Labor, Health and Human Services, Energy and Justice. The Department of Health and Human Services (DHHS) was delegated the responsibility of establishing methods for estimating radiation doses received by eligible claimants with cancer applying for compensation. NIOSH is applying the following methods to estimate the radiation doses of individuals applying for compensation.

In performance of its dose reconstruction responsibilities, under the Act, NIOSH is providing voluntary interview opportunities to claimants (or their survivors) individually and providing them with the opportunity to assist NIOSH in documenting the work history of the employee by characterizing the actual work tasks performed. In addition, NIOSH and the claimant may identify incidents that may have resulted in undocumented radiation exposures, characterizing radiological protection and monitoring practices, and identify co-workers and other witnesses as may be necessary to confirm undocumented information. In this process, NIOSH uses a computer assisted telephone interview (CATI) system, which allows interviews to be conducted more efficiently and quickly as opposed to a paper-based interview instrument. Both interviews are voluntary and failure to participate in either or both interviews will not have a negative effect on the claim, although voluntary participation may assist the claimant by adding important information that may not be otherwise available.

NIOSH uses the data collected in this process to complete an individual dose reconstruction that accounts, as fully as possible, for the radiation dose incurred by the employee in the line of duty for DOE nuclear weapons production programs. After dose reconstruction, NIOSH also performs a brief, voluntary final interview with the claimant to explain the results and to allow the claimant to confirm or question the records NIOSH has compiled. This will also be the final opportunity for the claimant to supplement the dose reconstruction record.

At the conclusion of the dose reconstruction process, the claimant submits a form to confirm that the claimant has no further information to provide to NIOSH about the claim at this time. The form notifies the claimant that signing the form allows NIOSH to forward a dose reconstruction report to DOL and to the claimant, and closes the record on data used for the dose reconstruction. Signing this form does not indicate that the claimant agrees with the outcome of the dose reconstruction. The dose reconstruction results will be supplied to the claimant and to the DOL, the agency that will utilize them as one part of its determination of whether the claimant is eligible for compensation under the Act.

There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours)	Total response burden hours
Initial interview	4,200	1	1	4,200
Conclusion Form	8,400	1	5/60	700

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours)	Total response burden hours
Total				4,900

Dated: September 22, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–25010 Filed 9–28–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–11AI]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Measuring Preferences for Quality of Life for Child Maltreatment—New—National Center for Injury Prevention and Control (NCIPC), Division of Violence Prevention (DVP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Child maltreatment (CM) is a major public health problem in the United States, causing substantial morbidity and mortality (DHHS, 2010), and the prevalence for any of the three major types of CM (physical abuse, sexual abuse, and neglect) is estimated at approximately 28% (Hussey *et al.,* 2006). Additionally, the annual incidence of any type of CM among children and adolescents 0–17 has been estimated at nearly 14%, while physical and sexual abuse are estimated at 3.7% and 0.6%, respectively (Finkelhor *et al.,* 2005). CM has been shown to have lifelong adverse physical and mental health consequences for victims (Felitti *et al.,* 1998), including behavioral problems (Felitti et al. 1998; Repetti *et al.* 2002), mental health conditions such as post-traumatic stress disorder (PTSD) (Browne and Finkelhor, 1986; Holmes and Sammel, 2005; Moeller and Bachman, 1993), increased trouble with interpersonal relationships (Fang and Corso, 2007), increased risk of chronic diseases (Browne and Finkelhor, 1986), and lasting impacts or disability from physical injury (Dominguez *et al.* 2001). The consequences of CM have both a direct impact, through reduced health, as well as an indirect impact, through reduced health-related quality of life (HRQoL, or simply QoL), the state of ''utility'' or satisfaction that a person experiences as a result of their health (Drummond *et al.* 1997).

The CDC requests approval of a survey-based study to measure the Health-Related Quality-of-Life (HRQoL) impacts resulting from child maltreatment (CM) using a quantitative, preference-based approach. The U.S. Department of Health and Human Services, among many others, has identified child maltreatment as a serious U.S. public health problem with substantial long-term physical and psychological consequences. Despite considerable research on the consequences of CM in adults, few studies have utilized standard HRQoL techniques and none have quantified childhood HRQoL impacts. This gap in the literature means the full burden of CM on HRQoL has not been measured, inhibiting the evaluation and comparison of CM intervention programs. This study will improve public health knowledge and economic evaluation of the HRQoL impacts of CM, including effects specific to juvenile and adolescent victims, through the development and fielding a preference-based survey instrument.

CDC has developed an exploratory survey instrument to quantify the HRQoL impacts of child maltreatment following standardized HRQoL methods. The survey was developed based on findings from a literature review of CM outcomes, focus groups with adult CM victims, and expert review of outcomes by clinician consultants who work with children and/or adults who were victims of CM or who are researchers in the field of CM. The survey is designed to quantify two types of data. The main objective is the HRQoL decrement attributable to CM, measured as the difference in HRQoL scores by CM victimization history. A secondary objective is a statistical evaluation of these decrements, based on respondent preferences over a series of comparisons that will be shown to survey respondents.

The online survey will be fielded to a nationally-representative sample of 750 adults ages 18–29 and 1100 adults ages 18 and up, for a total of 1850 U.S. adults. The survey will include HRQoL questions to capture the two types of data above, as well as select items on sociodemographics. Past exposure to CM will be measured using the Child Trauma Questionnaire (CTQ), the briefest and most nonintrusive set of scientifically validated questions to identify 5 types of past child abuse and neglect.

Final results will provide an estimate of the HRQoL burden of child maltreatment in the United States. Analysis and results of the survey data may provide suggestive information on the impacts of CM to the scientific and public health communities to help determine whether future studies using similar methods should be conducted after this exploratory study. There is no cost to respondents other than their time. The total estimated annual burden hours are 771.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)
Adults, age 18–29	Health Related Quality of Life Survey	750	1	25/60
Adults, age 18+	Health Related Quality of Life Survey	1100	1	25/60

Dated: September 22, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–25009 Filed 9–28–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–0572]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Health Message Testing System (OMB No. 0920–0572, Exp. 11/31/2011)—Revision—Office of the Associate Director for Communication, Centers for Disease Control and Prevention CDC).

Background and Brief Description

Before CDC disseminates a health message to the public, the message always undergoes scientific review. However, even though the message is based on sound scientific content, there is no guarantee that the public will understand a health message or that the message will move people to take recommended action. Communication theorists and researchers agree that for health messages to be as clear and influential as possible, target audience members or representatives must be involved in developing the messages and provisional versions of the messages must be tested with members of the target audience.

However, increasingly there are circumstances when CDC must move swiftly to protect life, prevent disease, or calm public anxiety. Health message testing is even more important in these instances, because of the critical nature of the information need.

CDC receives a mandate from Congress with a tight deadline for communicating with the public about a specific topic. For example, Congress gave CDC 120 days to develop and test messages for a public information campaign about *Helicobacter pylori,* a bacterium that can cause stomach ulcers and increase cancer risk if an infected individual is not treated with antibiotics.

In the interest of timely health message dissemination, many programs forgo the important step of testing messages on dimensions such as clarity, salience, appeal, and persuasiveness (*i.e.,* the ability to influence behavioral intention). Skipping this step avoids the delay involved in the standard OMB review process, but at a high potential cost. Untested messages can waste communication resources and opportunities because the messages can be perceived as unclear or irrelevant. Untested messages can also have unintended consequences, such as jeopardizing the credibility of Federal health officials.

The Health Message Testing System (HMTS), a generic information collection, will enable programs across CDC to collect the information they require in a timely manner to:

- Ensure quality and prevent waste in the dissemination of health information by CDC to the public.
- Refine message concepts and to test draft materials for clarity, salience, appeal, and persuasiveness to target audiences.
- Guide the action of health communication officials who are responding to health emergencies, Congressionally-mandated campaigns with short timeframes, media-generated public concern, time-limited communication opportunities, trends, and the need to refresh materials or dissemination strategies in an ongoing campaign.

Each testing instrument will be based on specific health issues or topics. Although it is not possible to develop one instrument for use in all instances, the same kinds of questions are asked in most message testing. This package includes generic questions and formats that can used to develop health message testing data collection instruments. These include a list of screening questions, comprised of demographic and introductory questions, along with other questions that can be used to create a mix of relevant questions for each proposed message testing data collection method. However, programs may request to use additional questions if needed.

Message testing questions will focus on issues such as comprehension, impressions, personal relevance, content and wording, efficacy of response, channels, and spokesperson/sponsor. Such information will enable message developers to enhance the effectiveness of messages for intended audiences.

Data collection methods proposed for HMTS include intercept interviews, telephone interviews, focus groups, online surveys, and cognitive interviews. In almost all instances, data will be collected by outside organizations under contract with CDC.

There is no cost to the respondents other than their time. The total estimated annualized burden hours are 2,470.

TABLE A12A—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection methods	Number of respondents per method	Number of responses per respondent	Average burden per response (in hours)
Central Location Intercept Interviews, Telephone Interviews, Individual In-depth Interview (Cognitive Interviews), Focus Group Screenings, Focus Groups, Online Surveys	18,525	1	8/60

Dated: September 19, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–25007 Filed 9–28–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–11IN]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Testing and Evaluation of Tobacco Communication Activities—New—Office on Smoking and Health (OSH), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Tobacco use remains the leading preventable cause of death in the United States. Recent legislative developments highlight the importance of tobacco control—and appropriate tobacco control messages—in efforts to improve the nation's health. These developments include the Prevention and Public Health Fund, established by the Affordable Care Act (ACA), which supports initiatives designed to reduce the health and financial burden of tobacco use through prevention and cessation approaches.

CDC requests OMB approval of a new, generic clearance mechanism to support information collection for the development, implementation and evaluation of tobacco-related health messages, health communication programs, and campaigns. The proposed generic mechanism will establish a unified clearance framework for a broad array of tobacco-related communication activities, which may occur on an as-needed basis, or in the context of a coordinated series of activities. A generic clearance is needed to support the breadth, flexibility and time-sensitivity of information collections required to plan, execute and evaluate an ACA-funded tobacco communication campaign, as well as ongoing health communication efforts in CDC's Office on Smoking and Health (OSH). OSH employs a strategic and systematic approach to the design and evaluation of high-quality health messages and campaigns, by applying scientific methods to the development of health messages, obtaining input from public health partners, and pre-testing with target audiences.

OMB approval for each data collection activity conducted under the generic clearance will be requested through a specific Information Collection Request that describes the activity's purpose, use, methodology, and burden on respondents. A variety of methods will be employed, including:

(1) In-depth interviews, such as cognitive interviews and interviews with key informants. In-depth interviews will typically be conducted in-person with an average burden per response of one hour. The total estimated annualized burden for in-depth interviews is 67 hours.

(2) In-person focus groups, primarily for creative concept testing, and online focus groups, primarily for social media concept testing. The estimated burden per response is 1–1.5 hours. The total estimated annualized burden for focus groups is 360 hours.

(3) Short surveys involving an average burden per response of 10 minutes, conducted online or through bulletin boards, for message platform testing, message validation and copy testing, pilot evaluation activities, and rough cut testing. The total estimated annualized burden for short surveys is 1,334 hours.

(4) Medium-length surveys involving an average burden of 25 minutes per response, conducted by telephone or online, for campaign evaluation, quantitative social media concept testing, and validation of advertisements and Surgeon General report materials. The total estimated annualized burden for medium-length surveys is 5,555 hours.

(5) In-depth surveys involving an average burden of one hour per response, for formative testing, outcome evaluation, and analyses of exposure, awareness, and knowledge, attitudes or behavior. The total estimated annualized burden for in-depth surveys is 1,292 hours.

Results of these information collections will be used to improve the clarity, salience, appeal, and persuasiveness of messages and campaigns that support the prevention and control of tobacco use.

Approval of the generic mechanism is requested for three years. Respondents will be members of the general public or target populations. Participation in data collection is voluntary, and there are no costs to respondents other than their time. The total estimated annualized burden hours are 8,608.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Data collection method	Number of respondents	Number of responses per respondent	Average burden per response
General Public and Special Populations	In-depth Interviews	67	1	1
	Focus Groups (In Person)	160	1	1.5

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Data collection method	Number of respondents	Number of responses per respondent	Average burden per response
	Focus Groups (Online)	120	1	1
	Short Surveys	8,001	1	10/60
	Medium Surveys	13,334	1	25/60
	In-depth Surveys	1,292	1	1

Dated: September 22, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–25005 Filed 9–28–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–240]

Request for Information: Announcement of Carcinogen and Recommended Exposure Limit (REL) Policy Assessment

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice and extension of public comment period.

SUMMARY: On August 23, 2011, the Director of the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) published a notice in the **Federal Register** (76 FR 52664) announcing its intent to ''review its approach to classifying carcinogens and establishing recommended exposure limits (RELs) for occupational exposures to hazards associated with cancer.'' As part of this effort, NIOSH requested initial input on issues, and answers to 5 questions. NIOSH has also created a new NIOSH Cancer and RELs Policy Web Topic Page [see *http://www.cdc.gov/niosh/topics/cancer/policy.html*] to provide additional details about this effort and progress updates.

Written comment was to be received by September 22, 2011. NIOSH has received a request to extend the comment period to permit the public more time to gather and submit information. NIOSH is extending the public comment period to Friday, December 30, 2011.

Public Comment Period: Written or electronic comments must be received on or postmarked by Friday, December 30, 2011.

ADDRESSES: Written comments, identified by docket number NIOSH–240, may be submitted by any of the following methods:

- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226.
- *Facsimile:* (513) 533–8285.
- *E-mail: nioshdocket@cdc.gov.*

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Room 111, Cincinnati, Ohio 45226. A complete electronic docket containing all comments submitted will be available on the NIOSH Web page at *http://www.cdc.gov/niosh/docket,* and comments will be available in writing by request. NIOSH includes all comments received without change in the docket, including any personal information provided. All electronic comments should be formatted as Microsoft Word. Please make reference to docket number NIOSH–240.

FOR FURTHER INFORMATION CONTACT: T.J. Lentz, telephone (513) 533–8260, or Faye Rice, telephone (513) 533–8335, NIOSH, MS–C32, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Dated: September 23, 2011.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2011–25039 Filed 9–28–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following meeting for the aforementioned committee:

Times and Dates

8 a.m.–6 p.m., October 25, 2011.

8 a.m.–1:15 p.m., October 26, 2011.

Place: CDC, Tom Harkin Global Communications Center, 1600 Clifton Road, NE., Building 19, Kent ''Oz'' Nelson Auditorium, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters To Be Discussed: The agenda will include discussions on: Child/adolescent immunization schedules; adult immunization schedule; human papillomavirus vaccine; hepatitis B vaccine; meningococcal vaccines; influenza; 13-valent pneumococcal conjugate vaccine; measles, mumps, and rubella (MMR) vaccine; febrile seizures and vaccines; pertussis; immunization coverage among children and adolescents; and vaccine supply.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Stephanie B. Thomas, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road, NE., MS–A27, Atlanta, Georgia 30333, telephone (404) 639–8836; E-mail *ACIP@CDC.GOV.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention, and Agency for Toxic Substances and Disease Registry.

Dated: September 21, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–25012 Filed 9–28–11; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0279]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Prescription Drug Marketing Act of 1987; Administrative Procedures, Policies, and Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by October 31, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, *FAX:* 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0435. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *juanmanuel.vilela@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Prescription Drug Marketing Act of 1987; Administrative Procedures, Policies, and Requirements—21 CFR Part 203—(OMB Control Number 0910–0435)—Extension

FDA is requesting OMB approval under the PRA (44 U.S.C. 3501–3520) for the reporting and recordkeeping requirements contained in the regulations implementing the Prescription Drug Marketing Act of 1987 (PDMA) (Pub. L. 100–293). PDMA was intended to ensure that drug products purchased by consumers are safe and effective and to avoid an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs are sold.

PDMA was enacted by Congress because there were insufficient safeguards in the drug distribution system to prevent the introduction and retail sale of substandard, ineffective, or counterfeit drugs, and that a wholesale drug diversion submarket had developed that prevented effective control over the true sources of drugs.

Congress found that large amounts of drugs had been reimported into the United States as U.S. goods returned causing a health and safety risk to U.S. consumers because the drugs may become subpotent or adulterated during foreign handling and shipping. Congress also found that a ready market for prescription drug reimports had been the catalyst for a continuing series of frauds against U.S. manufacturers and had provided the cover for the importation of foreign counterfeit drugs.

Congress also determined that the system of providing drug samples to physicians through manufacturers' representatives had resulted in the sale to consumers of misbranded, expired, and adulterated pharmaceuticals.

The bulk resale of below-wholesale priced prescription drugs by health care entities for ultimate sale at retail also helped to fuel the diversion market and was an unfair form of competition to wholesalers and retailers who had to pay otherwise prevailing market prices.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements:

TABLE 1—REPORTING REQUIREMENTS

21 CFR Section	Requirement
203.11	Applications for reimportation to provide emergency medical care.
203.30(a)(1) and (b)	Drug sample requests (drug samples distributed by mail or common carrier).
203.30(a)(3), (a)(4), and (c)	Drug sample receipts (receipts for drug samples distributed by mail or common carrier).
203.31(a)(1) and (b)	Drug sample requests (drug samples distributed by means other than the mail or a common carrier).
203.31(a)(3), (a)(4), and (c)	Drug sample receipts (drug samples distributed by means other than the mail or a common carrier).
203.37(a)	Investigation of falsification of drug sample records.
203.37(b)	Investigation of a significant loss or known theft of drug samples.
203.37(c)	Notification that a representative has been convicted of certain offenses involving drug samples.
203.37(d)	Notification of the individual responsible for responding to a request for information about drug samples.
203.39(g)	Preparation by a charitable institution of a reconciliation report for donated drug samples.

TABLE 2—RECORDKEEPING REQUIREMENTS

21 CFR Section	Requirement
203.23(a) and (b)	Credit memo for returned drugs.
203.23(c)	Documentation of proper storage, handling, and shipping conditions for returned drugs.
203.30(a)(2) and 203.31(a)(2)	Verification that a practitioner requesting a drug sample is licensed or authorized by the appropriate State authority to prescribe the product.
203.31(d)(1) and (d)(2)	Contents of the inventory record and reconciliation report required for drug samples distributed by representatives.

TABLE 2—RECORDKEEPING REQUIREMENTS—Continued

21 CFR Section	Requirement
203.31(d)(4)	Investigation of apparent discrepancies and significant losses revealed through the reconciliation report.
203.31(e)	Lists of manufacturers' and distributors' representatives.
203.34	Written policies and procedures describing administrative systems.
203.37(a)	Report of investigation of falsification of drug sample records.
203.37(b)	Report of investigation of significant loss or known theft of drug samples.
203.38(b)	Records of drug sample distribution identifying lot or control numbers of samples distributed. (The information collection in 21 CFR 203.38(b) is already approved under OMB control number 0910–0139).
203.39(d)	Records of drug samples destroyed or returned by a charitable institution.
203.39(e)	Record of drug samples donated to a charitable institution.
203.39(f)	Records of donation and distribution or other disposition of donated drug samples.
203.39(g)	Inventory and reconciliation of drug samples donated to charitable institutions.
203.50(a)	Drug origin statement.
203.50(b)	Retention of drug origin statement for 3 years.
203.50(d)	List of authorized distributors of record.

The reporting and recordkeeping requirements are intended to help achieve the following goals: (1) To ban the reimportation of prescription drugs produced in the United States, except when reimported by the manufacturer or under FDA authorization for emergency medical care; (2) to ban the sale, purchase, or trade, or the offer to sell, purchase, or trade, of any prescription drug sample; (3) to limit the distribution of drug samples to practitioners licensed or authorized to prescribe such drugs or to pharmacies of hospitals or other health care entities at the request of a licensed or authorized practitioner; (4) to require licensed or authorized practitioners to request prescription drug samples in writing; (5) to mandate storage, handling, and recordkeeping requirements for prescription drug samples; (6) to prohibit, with certain exceptions, the sale, purchase, or trade of, or the offer to sell, purchase, or trade, prescription drugs that were purchased by hospitals or other health care entities, or which were donated or supplied at a reduced price to a charitable organization; (7) to require unauthorized wholesale distributors to provide, prior to the wholesale distribution of a prescription drug to another wholesale distributor or retail pharmacy, a statement identifying each prior sale, purchase, or trade of the drug.

In the **Federal Register** of June 6, 2011 (76 FR 32362), FDA published a 60-day notice requesting public comment on the proposed collection of information. We received one comment. The comment did not pertain to the information collection discussed in the June 2011 **Federal Register** notice, but commended the use of electronic and automated health information solutions to reduce costs and improve health care efficiency.

FDA Response: There were no issues raised in the comment to be resolved.

FDA estimates the burden of this collection of information as follows:

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual respondents	Average burden per response (in hours)	Total hours
203.11	1	1	1	.5	.5
203.30(a)(1) and (b)	61,961	12	743,532	.06	44,612
203.30(a)(3), (a)(4), and (c)	61,961	12	743,532	.06	44,612
203.31(a)(1) and (b)	232,355	135	31,367,925	.04	1,254,717
203.31(a)(3), (a)(4), and (c)	232,355	135	31,367,925	.03	941,038
203.37(a)	50	4	200	.25	50
203.37(b)	50	40	2,000	.25	500
203.37(c)	1	1	1	1	1
203.37(d)	50	1	50	.08	4
203.39(g)	1	1	1	1	1
Total					2,285,535.5

[1] There are no operating and maintenance costs or capital costs associated with this collection of information.

TABLE 4—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping (in hours)	Total hours
203.23(a) and (b)	31,676	5	158,380	.25	39,595
203.23(c)	31,676	5	158,380	.08	12,670
203.30(a)(2) and 203.31(a)(2)	2,208	100	220,800	.50	110,400

TABLE 4—ESTIMATED ANNUAL RECORDKEEPING BURDEN—Continued

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping (in hours)	Total hours
203.31(d)(1) and (d)(2)	2,208	1	2,208	40	88,320
203.31(d)(4)	442	1	442	24	10,608
203.31(e)	2,208	1	2,208	1	2,208
203.34	90	1	90	40	3,600
203.37(a)	50	4	200	6	1,200
203.37(b)	50	40	2000	6	1,200
203.39(d)	65	1	65	1	65
203.39(e)	3,221	1	3,221	.50	1,610
203.39(f)	3,221	1	3,221	8	25,768
203.39(g)	3,221	1	3,221	8	25,768
203.50(a)	125	100	12,500	.17	2,125
203.50(b)	125	100	12,500	.50	6,250
203.50(d)	691	1	691	2	1,382
Total					332,769

[1] There are no operating and maintenance costs or capital costs associated with this collection of information.

Dated: September 26, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–25117 Filed 9–28–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0023]

Guidance for Industry on Target Animal Safety and Effectiveness Protocol Development and Submission; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry (#215) entitled ''Target Animal Safety and Effectiveness Protocol Development and Submission.'' The purpose of this document is to provide sponsors guidance in preparation of study protocols for review by the Center for Veterinary Medicine, Office of New Animal Drug Evaluation. The recommendations included in this guidance are intended to reduce the time to protocol concurrence.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the 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: Angela Clarke, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8318; *e-mail: angela.clarke@fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 3, 2011 (76 FR 6143), FDA published the notice of availability for a draft guidance entitled ''Target Animal Safety and Effectiveness Protocol Development and Submission,'' giving interested persons until April 19, 2011, to comment on the draft guidance. FDA received one comment on the draft guidance and that comment was considered as the guidance was finalized. Changes include editorial revisions to improve clarity regarding how and when data collection forms and standard operating procedures should be included with the protocol submission. The guidance announced in this notice finalizes the draft guidance dated February 2, 2011.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on the 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.

III. Paperwork Reduction Act of 1995

This 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 this guidance have been approved under OMB control no. 0910–0032.

IV. 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.

V. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: September 26, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–25115 Filed 9–28–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–D–0438] (Formerly 2004D–0027)

Guidance for Industry on Time and Extent Applications for Nonprescription Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Time and Extent Applications for Nonprescription Drug Products.'' This guidance describes a two-step process on how to request that a new condition be added to the over-the-counter (OTC) drug monograph system. The process includes submitting a time and extent application (TEA) to determine whether a condition is eligible for inclusion in the OTC drug monograph system and, if the condition is found to be eligible, submitting safety and effectiveness data. This guidance is designed to clarify the TEA process and what happens after a TEA is submitted. This guidance finalizes the draft guidance for industry entitled ''Time and Extent Applications'' published in the **Federal Register** on February 10, 2004 (69 FR 6309).

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this 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. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the 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: Ruth E. Scroggs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5488, Silver Spring, MD 20993–0002, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Time and Extent Applications for Nonprescription Drug Products.'' This guidance provides information about how to request that a new condition be added to the OTC drug monograph system. The OTC drug monograph system was established to evaluate the safety and effectiveness of all OTC drug products marketed in the United States before May 11, 1972, that were not marketed under approved new drug applications (NDAs) and all OTC drug products covered by ''safety'' NDAs that were marketed in the United States before enactment of the 1962 drug amendments to the Federal Food, Drug, and Cosmetic Act (the FD&C Act). In 1972, FDA began its OTC drug review to evaluate eligible OTC drug products by categories or classes (e.g., antacids, skin protectants), rather than on a product-by-product basis, and to develop ''conditions'' under which classes of OTC drug products are generally recognized as safe and effective (GRASE) and not misbranded.

FDA publishes these conditions, including active ingredients, labeling, and other general conditions under which a class of OTC drug products is considered GRASE, in the **Federal Register** in the form of OTC drug monographs. Final monographs are codified in 21 CFR parts 331 through 358. Manufacturers seeking to market an OTC drug product covered by an OTC drug monograph need not obtain FDA approval before marketing if their drug product meets the conditions in part 330 (21 CFR part 330) and the applicable final monograph (§ 330.1).

Before § 330.14 went into effect in 2002, there was no formal process to add OTC drug products that had not been marketed in the United States before May 11, 1972, to the OTC drug monograph system. Interested persons were required to obtain premarketing approval under section 505 of the FD&C Act (21 U.S.C. 355) if they wanted to introduce into the United States an OTC drug product that had been marketed solely in a foreign country. Companies also were required to obtain premarketing approval to market OTC drug products initially marketed in the United States after the OTC drug review began in 1972.

In the **Federal Register** of January 23, 2002 (67 FR 3060), FDA published a final rule that amended the OTC drug review procedures in part 330 and included additional criteria and procedures for classifying OTC drug products as GRASE and not misbranded. The final rule provided a process for establishing that certain OTC drug products, which previously required premarketing approval under section 505 of the FD&C Act to be marketed, were eligible to be considered for inclusion in the OTC drug monograph system. Under the regulation in § 330.14, an applicant must first submit a TEA to show that the drug product is eligible for inclusion in the OTC drug monograph system by showing that the drug product has been marketed ''to a material extent'' and ''for a material time.'' If FDA determines that the condition meets the time and extent eligibility criteria, FDA publishes a notice of eligibility in the **Federal Register**, and the applicant and other interested parties have the opportunity to submit safety and effectiveness data to FDA for evaluation. This two-step process allows applicants to demonstrate that eligibility criteria are met before expending resources to prepare safety and effectiveness data.

In the **Federal Register** of February 10, 2004, FDA announced the availability of the draft guidance for industry entitled ''Time and Extent Applications.'' FDA received comments on the draft guidance, considered those comments, and revised the guidance as appropriate. The finalized TEA guidance announced in this document replaces the February 2004 draft guidance. This guidance is designed to clarify the TEA process. We are providing this guidance because we have received inquiries from the public regarding the TEA process.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on TEAs. 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. Paperwork Reduction Act of 1995

This 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 § 330.14 have been approved under OMB control number 0910–0688. The collections of information in 21 CFR part 25 and the guidance for industry entitled ''Environmental Assessment of Human Drug and Biologics Applications,'' which are referenced in the guidance announced in this document, are approved under OMB control number 0910–0322.

III. 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.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: September 26, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–25118 Filed 9–28–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0690]

Center for Drug Evaluation and Research, Approach to Addressing Drug Shortage; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is opening a comment period for the notice of public workshop published in the **Federal Register** of July 28, 2011 (76 FR 45268). In that notice, FDA announced a public workshop regarding the approach of the Center for Drug Evaluation and Research to addressing drug shortages. FDA is opening a comment period in light of public interest in this topic and in order to gain additional insight about the causes and impact of drug shortages, and possible strategies for preventing or mitigating drug shortages.

DATES: Either electronic or written comments will be accepted after the workshop until December 23, 2011.

ADDRESSES: Submit electronic comments 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: Christine Moser or Lori Benner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6202, Silver Spring, MD 20993–0002, 301–796–1300.

SUPPLEMENTARY INFORMATION:

I. Background

FDA held a public workshop regarding CDER's current approach to addressing drug shortages. Given the increasing number of drug shortages and the attendant safety concerns for the public's health, it is important to discuss the causes of these shortages, as well as strategies to address them. This public workshop focused on collecting information and gaining perspective from professional societies, patient advocates, industry, consumer groups, health care professionals, researchers, and other interested persons. The topics discussed: How CDER becomes aware of drug shortages, Reasons behind drug shortages, Determination of medically necessary products, CGMP (current good manufacturing practice) and other compliance issues, Actions taken when a drug shortage occurs, and Outcomes of mitigated drug shortages. Additional discussions included the public health impact of drug shortages and what measures can be taken to prevent the occurrence of a drug shortage. The Agency encouraged professional societies, patient advocates, industry, consumer groups, health care professionals, researchers, and other interested persons to attend this public workshop.

II. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov,* approximately 45 days after the public workshop. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

III. 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: September 26, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–25116 Filed 9–28–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Food Defense Workshop; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA), Office of Regulatory Affairs, Southwest Regional Office (SWRO), in cosponsorship with Oklahoma State University, Robert M. Kerr Food & Agricultural Products Center (FAPC), is announcing a public workshop entitled ''Food Defense Workshop.'' This public workshop is intended to provide information about food defense as it relates to food facilities such as farms, manufacturers, processors, distributors, retailers, and restaurants.

Date and Time: This public workshop will be held on November 2, 2011, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Robert M. Kerr Food & Agricultural Products Center, Oklahoma State University, 148 FAPC, Stillwater, OK 74078–6055.

Contact: David Arvelo, Office of Regulatory Affairs, Food and Drug Administration, Southwest Regional Office, 4040 North Central Expressway, suite 900, Dallas, TX 75204, 214–253–

4952, FAX: 214–253–4970, e-mail: *david.arvelo@fda.hhs.gov.*

For information on accommodation options, contact conference coordinator Karen Smith or Andrea Graves at the Robert M. Kerr Food & Agricultural Products Center, Oklahoma State University, 148 FAPC, Stillwater, OK 74078–6055, 405–744–6071, FAX: 405–744–6313, or e-mail: *karenl.smith@okstate.edu* or *andrea.graves@okstate.edu.* More information is also available online at *http://www.fapc.biz/fooddefense.html.* (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**.)

Registration: You are encouraged to register by October 21, 2011. The workshop has a $150 registration fee to cover the cost of facilities, materials, speakers, and breaks. Seats are limited; please submit your registration as soon as possible. The workshop will be filled in order of receipt of registration. Those accepted into the workshop will receive confirmation. Registration will close after the workshop is filled. Registration at the site is not guaranteed but may be possible on a space available basis on the day of the public workshop beginning at 8 a.m. The cost of registration at the site is $200 payable to FAPC. There is no registration fee for FDA employees.

If you need special accommodations due to a disability, please contact Karen Smith (see *Contact*) at least 7 days in advance.

Registration Form Instructions: To register, please complete the online registration form at *http://www.fapc.biz/fooddefense.html.*

Transcripts: Transcripts of the public workshop will not be available due to the format of this workshop. Course handouts may be requested after the date of the public workshop through the contact persons (see *Contact*) at cost plus shipping.

SUPPLEMENTARY INFORMATION: This public workshop is being held in response to the large volume of food defense inquiries from food manufacturers originating from the area covered by the FDA Dallas District Office. The SWRO presents this workshop to help achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which include working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. This is consistent with the purposes of the Southwest Regional Small Business Representative Program, which are in part to respond to industry inquiries, develop educational materials, and sponsor workshops and conferences to provide firms, particularly small businesses, with firsthand working knowledge of FDA's regulations and compliance policies. This workshop is also consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), as outreach activities by government agencies to small businesses.

The goal of this public workshop is to present information that will enable regulated industry to better comply with the regulations authorized by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and to better understand FDA's food defense guidance documents, especially in light of growing concerns about food protection. Information that FDA presents will be based on Agency position as articulated through regulation, guidance, and information previously made available to the public. Topics to be discussed at the workshop (both by FDA and non-FDA speakers) include: (1) Food defense awareness and definitions, (2) FDA food defense tools such as ALERT and Employees FIRST, (3) regulations issued under the Bioterrorism Act, (4) food defense guidance documents, (5) investigating food-related incidents effectively, (6) physical plant security, (7) crisis management, and other related topics. For more information, please visit *http://www.fapc.biz/fooddefense.html.* FDA expects that participation in this public workshop will provide regulated industry with greater understanding of the Agency's regulatory and policy perspectives on food protection, increase compliance with FDA regulations, and heighten food defense awareness.

Dated: September 23, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–25114 Filed 9–28–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Request for Notification From Industry Organizations Interested in Participating in the Selection Process and Request for Nominations for a Nonvoting Industry Representative on the Vaccines and Biological Products Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of a nonvoting industry representative to serve on the Vaccines and Related Biological Products Advisory Committee for the Center for Biologics Evaluation and Research (CBER) notify FDA in writing. FDA is also requesting nominations for a nonvoting industry representative to serve the Vaccines and Related Biological Products Advisory Committee. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nomination will be accepted for current vacancies effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to the FDA by October 31, 2011, for the vacancy listed in this document. Concurrently, nomination materials for prospective candidates should be sent to FDA by October 31, 2011.

ADDRESSES: All letters of interest and nominations should be submitted in writing to Donald Jehn (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Donald Jehn, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314, *FAX:* 301–827–0294, *e-mail: donald.jehn@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency intends to add a nonvoting industry representative on the CBER Advisory Committee.

I. Vaccines and Related Biological Products Advisory Committee

The Vaccines and Related Biological Products Advisory Committee (the Committee) advises the Commissioner

of Food and Drugs (the Commissioner) or designee in discharging responsibilities as they relate to the regulation of vaccines and related biological products. Members are asked to provide their expert scientific and technical advice to FDA to help make sound decisions on the safety, effectiveness, and appropriate use, of vaccines and related biological products.

II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT** and **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations; and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the Committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative (for the roles specified in this document). Nominations must include a current resume or curriculum vitae of the nominee including current business address and/or home address, telephone number, email address if available, and the role for which the individual is being nominated. FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process).

FDA has a special interest in ensuring that women, minority groups, individuals with physical disabilities, and small businesses are adequately represented on its advisory committees, and therefore, encourages nominations for appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: September 23, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–25120 Filed 9–28–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee:

National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Digestive Diseases Core Centers.

Date: December 2, 2011.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person:

Maria E. Davila-Bloom, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 23, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25095 Filed 9–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Surgical Sciences and Bioengineering.

Date: October 20, 2011.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Malgorzata Klosek, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Diabetes, Obesity and Reproductive Sciences.

Date: October 25–26, 2011.

Time: 11:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Krish Krishnan, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship: Genes, Genomes, and Genetics.

Date: October 26, 2011.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Allen Barlow Richon, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–435–1024, *allen.richon@nih.hhs.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Skeletal Muscle, Bone, Oral and Skin Sciences.

Date: October 31, 2011.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chicago—O'Hare/Rosemont, 5500 North River Road, Rosemont, IL 60018.

Contact Person: Rajiv Kumar, PhD., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 23, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25153 Filed 9–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIH Summer Research Experience Programs.

Date: October 20, 2011.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David M. Armstrong, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center/Room 6138/MSC 9608, 6001 Executive Boulevard, Bethesda, MD 20892–9608, 301–443–3534, *armstrda@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Fellowships and Dissertation Grants.

Date: October 25, 2011.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David W. Miller, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25104 Filed 9–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Risk, Prevention and Health Behavior.

Date: October 12–13, 2011.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kristen Prentice, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, 301–496–0726, *prenticekj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 23, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25103 Filed 9–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group; NRRC 52 October 20, 2011 Meeting.

Date: October 20, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 23, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25101 Filed 9–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group, Social Sciences and Population Studies Study Section.

Date: October 20, 2011.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Avenue Hotel Chicago, 160 E. Huron Street, Chicago, IL 60611.

Contact Person: Valerie Durrant, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 827–6390, *durrantv@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group, Biostatistical Methods and Research Design Study Section.

Date: October 21, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 301 West Lombard Street, Baltimore, MD 21201.

Contact Person: Tomas Drgon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–1017, *tdrgon@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Dermatology, Rheumatology and Inflammation.

Date: October 24, 2011.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Skeletal Biology.

Date: October 25–26, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Contact Person: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aftab A Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, *ansaria@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–11–137: Model Systems for Fragile X Pre-Mutation and Primary Ovarian Insufficiency.

Date: October 26, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Brain Disorders and Related Neuroscience.

Date: October 27–28, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin St. Francis Hotel, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Vilen A Movsesyan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, *movsesyanv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Clinical Neurophysiology, Devices, Auditory Devices and Neuroprosthesis.

Date: October 27, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Intercontinental Harbor Court Baltimore, 550 Light Street, Baltimore, MD 21202.

Contact Person: Keith Crutcher, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1278. *crutcherka@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Biophysical and Physiological Neuroscience.

Date: October 27–28, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington, DC Dupont Circle Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Paek-Gyu Lee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7812, Bethesda, MD 20892, (301) 613–2064, *leepg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Molecular Genetics.

Date: October 27, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ronald Adkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301–495–4511, *ronald.adkins@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Advanced Neural Prosthetics.

Date: October 27, 2011.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Intercontinental Harbor Court Baltimore, 550 Light Street, Baltimore, MD 21202.

Contact Person: Keith Crutcher, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1278, *crutcherka@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 23, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25100 Filed 9–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; ''Combined Multipurpose Prevention Strategies for Sexual and Reproductive Health''.

Date: October 18, 2011.

Time: 12:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Jane K. Battles, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3147, Bethesda, MD 20892–7616, 301–451–2744, *battlesja@mail.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; ''Combined Multipurpose Prevention Strategies for Sexual and Reproductive Health''.

Date: October 31, 2011.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Jane K. Battles, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3147, Bethesda, MD 20892–7616, 301–451–2744, *battlesja@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 23, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25096 Filed 9–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Compositions and Method for Preventing Reactogenicity Associated with Administration of Immunogenic Live Rotavirus Compositions

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Provisional Patent Application No. 60/178,689, filed January 28, 2000 [HHS Ref. No. E–088–2000/0–US–01], now expired; PCT Patent Application No. PCT/US01/02686 [HHS Ref. No. E–088–2000/0–PCT–02] filed January 26, 2001, which published as WO/2001/54718 on August 2, 2001, now expired; U.S. Patent No. 7,431,931 [HHS Ref. No. E–088–2000/0–US–06]; Australian Patent No. 784344 [HHS Ref. No. E–088–2000/0–AU–04]; German Patent No. 60141681.308 [HHS Ref. No. E–088–2000/0–DE–08]; French Patent No. 1251869 [HHS Ref. No. E–088–2000/0–FR–09]; United Kingdom Patent No. 1251869 [HHS Ref. No. E–088–2000/0–GB–10]; and Canadian Patent Application No. 2398428 [HHS Ref. No. E–088–2000/0–CA–05], entitled ''Compositions and Method for Preventing Reactogenicity Associated with Administration of Immunogenic Live Rotavirus Compositions,'' and all continuing applications to International Medica Foundation, having a place of business in Rochester, Minnesota. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be ''worldwide'', and the field of use may be limited to ''rhesus-based rotavirus therapeutic and/or prophylactic vaccines.''

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before October 31, 2011 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Kevin W. Chang, Ph.D., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5018; Facsimile: (301) 402–0220; E-mail: *changke@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The present invention provides compositions for making a medicament and methods for the administration of vaccine compositions for protection against human rotaviral disease without significant reactogenicity. Human x rhesus reassortant rotavirus compositions were made which when administered during the first 7 to about 10 days of life, provided a composition which was non-reactogenic followed by booster immunizations at 16 to 18 weeks or 14 to 20 weeks, up to 1 year of age. The immune response induced by the initial neonatal administration of the live rotavirus vaccine composition protects the infant from the reactogenicity of the composition when administered as a second vaccine dose at or after 2 months of age. Administration of the immunogenic composition also is expected to ablate or significantly diminish the increase in the excess of intussusception observed 3 to 7 days following administration of the initial dose of rotavirus vaccine at about 2 to 4 months.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 22, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–25098 Filed 9–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0076]

DHS Data Privacy and Integrity Advisory Committee; Meeting

AGENCY: Privacy Office, DHS.

ACTION: Notice.

SUMMARY: On Wednesday, September 21, 2011, the DHS Privacy Office announced in the **Federal Register** at 76 FR 58524 that the Data Privacy and

Integrity Advisory Committee would meet on October 5, 2011, in Arlington, Virginia. This notice supplements that original meeting notice.

DATES: The DHS Data Privacy and Integrity Advisory Committee will meet on Wednesday, October 5, 2011, from 1 p.m. to 5 p.m. Please note that the meeting may end early if the Committee has completed its business.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App., which requires that notices of meetings of advisory committees be announced in the **Federal Register** 15 days prior to the meeting date. A notice of the meeting of the Board was published in the **Federal Register** on September 21, 2011, 14 days prior to the meeting, due to the mistaken delivery of the notice to another Federal agency rather than to the **Federal Register**. The other Federal agency received the notice, and the **Federal Register** office received that agency's material. By the time the error was noted by each office and DHS was contacted, DHS could no longer meet the 15 day requirement. During the meeting the Committee will discuss draft guidance to the Department on privacy protections for information sharing within DHS. The draft guidance will be posted on the Committee's web site (*http://www.dhs.gov/privacy*) in advance of the meeting. If you wish to submit comments on the draft guidance, you may do so in advance of the meeting by forwarding them to the Committee at the locations listed under **ADDRESSES** in the original notice. Please include the Docket Number (DHS 2011–0076) in your comments. A public comment period will be held during the meeting from 4 p.m. to 4:30 p.m., and speakers are requested to limit their comments to 3 minutes. If you would like to address the Committee at the meeting, we request that you register in advance by contacting Martha K. Landesberg at the address listed under **ADDRESSES** in the original notice or sign up at the registration desk on the day of the meeting.

FOR FURTHER INFORMATION CONTACT: Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780, by fax (703) 235–0442, or by e-mail to *PrivacyCommittee@dhs.gov.*

Dated: September 23, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–25079 Filed 9–28–11; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0662]

Amendment of Marine Safety Manual, Volume III

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed policy change and request for comments.

SUMMARY: The Coast Guard is considering cancelling its policy concerning the issuance of Merchant Mariner Credentials endorsed as Able Seaman-Mobile Offshore Units. The policy is currently found in Chapter 16 of the Marine Safety Manual, Volume III. The Coast Guard will accept comments from the public on whether to cancel the policy and on any impacts the cancellation may have.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before October 31, 2011 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0662 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 about this notice, call or e-mail Luke B. Harden, Mariner Credentialing Program Policy Division (CG–5434), U.S. Coast Guard, telephone 202–372–2357, e-mail *CG5434@uscg.mil.* If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation

You may submit comments and related material regarding whether to cancel the Able Seaman-Mobile Offshore Units (AB–MOU) endorsement. 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 notice (USCG–2011–0662) and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an 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* and click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu, select ''Notices'' and insert ''USCG–2011–0662'' in the ''Keyword'' box. Click ''Search,'' and 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.

Viewing the comments: To view the comments, go to *http://www.regulations.gov* and click on the ''Read Comments'' box, which will then become highlighted in blue. In the ''Keyword'' box, insert ''USCG–2011–0662'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington,

DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Background and Purpose

Chapter 16 of Volume III of the *Marine Safety Manual* (MSM), *Marine Industry Personnel,* COMDTINST M16000.8B, Qualified Ratings for *Merchant Mariner's Documents,* permits the issuance of an AB–MOU endorsement on a mariner's Merchant Mariner Credential, Merchant Mariner License, or Merchant Mariner Document. (*The MSM can be found online at: http://www.uscg.mil/directives/cim/16000-16999/CIM_16000_8B.pdf.)* This policy was put in place in order to increase the number of mariners eligible to serve on mobile offshore units.

The Coast Guard is considering whether to discontinue issuing merchant mariner credentials endorsed as AB–MOU. Under the proposed cancellation, mariners currently holding a credential endorsed as AB–MOU would be able to continue to serve under the authority of their existing credential until that credential expires. Upon these mariners' next renewal, the AB–MOU endorsement would be converted to one of the endorsements explicitly authorized by 46 U.S.C. 7306(b) and 46 CFR 12.05–1. As a default, the endorsement would be converted to AB—Limited unless the applicant's training and experience qualify the applicant for AB—Any Waters, Unlimited.

Authority

We issue this notice of cancellation under the authority of 5 U.S.C. 552(a).

Dated: September 16, 2011.

James A. Watson,

Rear Admiral, U.S. Coast Guard, Director, Prevention Policy.

[FR Doc. 2011–25033 Filed 9–28–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3329–EM; Docket ID FEMA–2011–0001]

Virginia; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Virginia (FEMA–3329–EM), dated August 26, 2011, and related determinations.

DATES: *Effective Date:* August 26, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 26, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5208 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the Commonwealth of Virginia resulting from Hurricane Irene beginning on August 26, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the Commonwealth of Virginia.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Donald L. Keldsen, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of Virginia have been designated as adversely affected by this declared emergency:

Accomack, Northampton, Isle of Wight, James City, Lancaster, Mathews, Middlesex, Northumberland, Richmond, Westmoreland, and New Kent Counties and the independent cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25137 Filed 9–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3328–EM; Docket ID FEMA–2011–0001]

New York; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA–3328–EM), dated August 26, 2011, and related determinations.

DATES: *Effective Date:* August 26, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 26, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5208 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of New York resulting from Hurricane Irene beginning on August 25, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of New York.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Philip E. Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Philip E. Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New York have been designated as adversely affected by this declared emergency:

Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk Counties for emergency protective measures (Category B), including Federal direct assistance, under the Public assistance program at 75 percent federal funding.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: September 23, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25133 Filed 9–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3326–EM; Docket ID FEMA–2011–0001]

Puerto Rico; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Puerto Rico (FEMA–3326–EM), dated August 22, 2011, and related determinations.

DATES: *Effective Date:* August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 22, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5208 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the Commonwealth of Puerto Rico resulting from Hurricane Irene beginning on August 21, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the Commonwealth of Puerto Rico.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Justo Hernández, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of Puerto Rico have been designated as adversely affected by this declared emergency:

All 78 municipalities in the Commonwealth of Puerto Rico for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program at 75 percent Federal funding.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036,

Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: September 23, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25132 Filed 9–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3341–EM; Docket ID FEMA–2011–0001]

New York; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of New York (FEMA–3341–EM), dated September 8, 2011, and related determinations.

DATES: *Effective Date:* September 11, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 11, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: September 23, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25126 Filed 9–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3339–EM; Docket ID FEMA–2011–0001]

Pennsylvania; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for Commonwealth of Pennsylvania (FEMA–3339–EM), dated August 29, 2011, and related determinations.

DATES: *Effective Date:* August 31, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Edward Smith as Federal Coordinating Officer for this emergency.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25156 Filed 9–28–11; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3318–EM; Docket ID FEMA–2011–0001]

North Dakota; Amendment No. 6 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for State of North Dakota (FEMA–3318–EM), dated April 7, 2011, and related determinations.

DATES: *Effective Date:* September 14, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Deanne Criswell, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Willie G. Nunn as Federal Coordinating Officer for this emergency.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25146 Filed 9–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4023–DR; Docket ID FEMA–2011–0001]

Connecticut; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–4023–DR), dated September 2, 2011, and related determinations.

DATES: *Effective Date:* September 2, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 2, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), for the State of Connecticut due to damage resulting from Tropical Storm Irene beginning on August 27, 2011, and continuing. I have authorized Federal relief and recovery assistance in the affected area.

Public Assistance and Hazard Mitigation will be provided. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs in the designated areas.

The Department of Homeland Security, Federal Emergency Management Agency (FEMA), will coordinate Federal assistance efforts and designate specific areas eligible for such assistance. The Federal Coordinating Officer will be Mr. Gary Stanley of FEMA. He will consult with you and assist in the execution of the FEMA-State Agreement for disaster assistance governing the expenditure of Federal funds.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gary Stanley, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Connecticut have been designated as adversely affected by this major disaster:

Fairfield, Litchfield, Middlesex, New Haven, and New London Counties for Public Assistance. Direct federal assistance is authorized.

All counties within the State of Connecticut are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25136 Filed 9–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4016–DR; Docket ID FEMA–2011–0001]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–4016–DR), dated August 24, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 24, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from severe storms, straight-line winds, and flooding during the period of July 9–14, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael R. Scott, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Iowa have been designated as adversely affected by this major disaster:

Benton, Clay Dickinson, Marshall, Story, and Tama Counties for Public Assistance. All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: September 23, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25130 Filed 9–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4024–DR; Docket ID FEMA–2011–0001]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–4024–DR), dated September 3, 2011, and related determinations.

DATES: *Effective Date:* September 3, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 3, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia resulting from Hurricane Irene during the period of August 26–28, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Donald L. Keldsen, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Virginia have been designated as adversely affected by this major disaster:

The counties of Essex, Isle of Wight, James City, Lancaster, Middlesex, New Kent, Richmond, Southampton, Sussex, Westmoreland, and York and the independent cities of Chesapeake, Emporia, Hampton, Hopewell, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg for Public Assistance.

All counties and independent cities in the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

September 23, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25131 Filed 9–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4031–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4031–DR), dated September 13, 2011, and related determinations.

DATES: *Effective Date:* September 11, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 11, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: September 23, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25127 Filed 9–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4026–DR; Docket ID FEMA–2011–0001]

New Hampshire; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Hampshire (FEMA–4026–DR), dated September 3, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Hampshire is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 3, 2011.

Belknap County for Public Assistance, including direct Federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25134 Filed 9–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4030–DR; Docket ID FEMA–2011–0001]

Pennsylvania; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–4030–DR), dated September 12, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 12, 2011.

Berks, Bucks, Chester, Delaware, Montgomery, Northampton, and Philadelphia Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25139 Filed 9–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4031–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4031–DR), dated September 13, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 13, 2011.

Broome, Chenango, Delaware, Otsego, and Tioga Counties for Public Assistance (already designated for Individual Assistance).

Tompkins County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25138 Filed 9–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4032–DR; Docket ID FEMA–2011–0001]

Maine; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Maine (FEMA–4032–DR), dated September 13, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Maine is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 13, 2011.

Lincoln County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030,

Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

September 23, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25129 Filed 9–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4012–DR; Docket ID FEMA–2011–0001]

Missouri; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–4012–DR), dated August 12, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 12, 2011.

Howard County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: September 23, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25128 Filed 9–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4029–DR; Docket ID FEMA–2011–0001]

Texas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4029–DR), dated September 9, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 9, 2011.

Harrison, Smith, and Upshur Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25135 Filed 9–28–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Discontinuation of H–2A and H–2B Temporary Worker Visa Exit Program Pilot CBP Dec. 11–16

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice; discontinuation of program pilot.

SUMMARY: This Notice announces that CBP is discontinuing the H–2A and H–2B Temporary Worker Visa Exit Program Pilot, effective September 29, 2011. The pilot began on December 8, 2009. It required temporary workers in H–2A or H–2B nonimmigrant classifications who enter the United States at the port of San Luis, Arizona, or the port of Douglas, Arizona, to depart (at the time of their final departure) from these respective ports and to submit certain biographical and biometric information at one of the kiosks established for this purpose.

DATES: The program pilot will be discontinued on September 29, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Erin M. McGillicuddy, Program Manager, Admissibility and Passenger Programs, Office of Field Operations, U.S. Customs and Border Protection, via e-mail at *erin.mcgillicuddy@dhs.gov.*

SUPPLEMENTARY INFORMATION: On December 18, 2008, U.S. Customs and Border Protection (CBP) published a notice in the **Federal Register** announcing that CBP was establishing a pilot program for a land-border exit system for H–2A temporary workers at certain designated ports of entry effective August 1, 2009.[1] 73 FR 77049.

The notice provided that H–2A workers who enter the United States at either the port of San Luis, Arizona, or the port of Douglas, Arizona, as participants in the Temporary Worker

[1] The H–2A nonimmigrant classification applies to aliens seeking to perform agricultural labor or services of a temporary or seasonal nature in the United States. Immigration and Nationality Act sec. 101(a)(15)(H)(ii)(a), 8 U.S.C. 1101(a)(15)(H)(ii)(a); *see generally* 8 CFR 214.12(h)(5)(a)(2) (describing requirements for H–2A classification).

Visa Exit Program must depart from one of those ports and submit certain biographical and biometric information at one of the kiosks established for this purpose.

On December 19, 2008, CBP published a second notice in the **Federal Register**, ''Notice of Expansion of Temporary Worker Visa Exit Program Pilot to Include H–2B Temporary Workers.'' 73 FR 77817.[2]

CBP published a third notice in the **Federal Register** on August 25, 2009 announcing the postponement of the commencement date of the H–2A and H–2B temporary Worker Visa Exit Program Pilot until December 8, 2009. 74 FR 42909.

The pilot has been operating for more than a year. The pilot tested the processes and technology used to monitor compliance and record the final departures of persons admitted under temporary worker visas as well as its general design and implementation. During this period, DHS gathered enough data to assess the pilot's technology, design and implementation and to identify lessons learned that can be applied to programs that may have similar requirements. The duration of the pilot has also allowed for the seasonal work cycle during which H–2A and H–2B visa holders typically enter and depart from the United States for agricultural or other temporary employment.

Among the challenges that arose during the pilot were that the persons subject to the pilot had trouble understanding the requirements and using the kiosks; although the pilot was designed to be an automated system, considerable time and resources by CBP field personnel were needed to assist the pilot participants in recording their exit; kiosk operability was unreliable and inconsistent due in large part to the harsh desert climate; and, the physical layout of the departure area at the border crossing limited CBP's ability to ensure compliance. The pilot reinforced the need to gain a full understanding of the covered population's skill sets in order to craft effective public information materials and to utilize appropriate technology that will support a high degree of compliance. For future programs, DHS will seek to ensure that the physical requirements for software and hardware reflect the extremes that can be faced in harsh border climates. The pilot also demonstrated that DHS must evaluate carefully the considerable time and resources that may be required by field personnel in order to continually support and explain processes used infrequently by a non-immigrant population subject to a program specific to that population.

Accordingly, this notice announces that the H–2A and H–2B Temporary Worker Visa Exit Program Pilot is being discontinued immediately. Any alien that is admitted on an H–2A or H–2B visa into the United States at the ports of San Luis, Arizona, and Douglas, Arizona, will no longer be subject to the requirements of the program pilot. Aliens who have already been admitted on an H–2A or H–2B visa to the United States at the ports of San Luis, Arizona and Douglas, Arizona will not be required to depart the United States from San Luis or Douglas and will not have to submit the biographical or biometric information that was required under the pilot program.

Regardless of their date or place of admission to the U.S., all H–2 workers are subject to the procedures governing H–2 nonimmigrants generally. H–2 workers are issued a Form I–94, Arrival/Departure Record, upon admission to the U.S. The form indicates the date of admission to the United States, the nonimmigrant classification, and the authorized period of admission. Once admitted to the United States, H–2 workers are required to comply with all terms and conditions of their admission and depart the United States on or before the expiration of the authorized period of stay unless the worker properly extends his or her status or changes his or her status and extends his or her period of authorized admission. H–2 workers must surrender the departure portion of the Form I–94 upon final exit from the United States.

Dated: September 21, 2011.

Alan D. Bersin,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2011–24716 Filed 9–28–11; 8:45 am]

BILLING CODE 9111–14–P

[2] The H–2B nonimmigrant classification applies to foreign workers entering the United States to perform temporary, non-agricultural labor or services. INA sec. 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b); *see generally* 8 CFR 214.1(a)(2)(h)(62) (designation for H–2B classification).

DEPARTMENT OF THE INTERIOR

Privacy Act of 1974; as Amended; Notice To Amend an Existing System of Records

AGENCY: Office of Inspector General, Interior.

ACTION: Notice of amendment to an existing system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department of the Interior (DOI) is issuing a public notice of its intent to amend the Office of Inspector General (OIG) Investigative Records system of records notice. The amendment includes a consolidated and updated list of routine uses. The amended system of records is captioned ''Investigative Records—Interior, Office of Inspector General—2 (OIG–2).'' This system of records OIG–2 was first published in the **Federal Register** on April 11, 1977 (42 FR 19014). The system was last revised on August 18, 1983 (48 FR 37536).

DATES: Comments must be received by November 8, 2011. This system will be effective November 8, 2011.

ADDRESSES: Any person interested in commenting on this amendment may do so by any of the following methods listed below.

Electronic Comments

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- *E-mail: Privacy@doioig.gov.* Please submit Internet comments as an ASCII file and avoid the use of special characters and any form of encryption.

Paper Comments

- *Regular U.S. Mail:* Sandra Evans, FOIA/Privacy Act Officer, Office of Inspector General, U.S. Department of the Interior, 1849 C Street, NW., Mail Stop—4428, Washington, DC 20240.
- *Overnight mail, courier, or hand delivery:* Sandra Evans, FOIA/Privacy Act Officer, Office of Inspector General, U.S. Department of the Interior, 1849 C Street, NW., Mail Stop–4428, Washington, DC 20240.

The OIG will post all comments on the OIG Web site (*http://www.doioig.gov*). Comments will be posted without change, and therefore submissions should only contain information that the commenter wishes to make publicly available.

FOR FURTHER INFORMATION CONTACT: Sandra Evans, FOIA/Privacy Act Officer, Office of Inspector General, U.S. Department of the Interior, 1849 C Street, NW., Mail Stop—4428, Washington, DC 20240, *Sandra_Evans@doioig.gov.*

SUPPLEMENTARY INFORMATION: The Office of Inspector General—Office of Investigations, and Regional Offices, maintain the above-entitled system of records. The purpose of this system is to store certain investigative case files and other materials created or gathered in the course of an official investigation. Records maintained in the system are

sensitive but unclassified. The amendments to the system will be effective as proposed at the end of the comment period (the comment period will end 40 days after the publication of this notice in the **Federal Register**), unless comments are received which would require a contrary determination. DOI will publish a revised notice if changes are made based upon a review of the comments received.

Dated: September 23, 2011.

Sandra Evans,

FOIA/Privacy Act Officer, Office of Inspector General

SYSTEM NAME:

Investigative Records—Interior, Office of Inspector General—2 (OIG–2).

SYSTEM LOCATIONS:

(1) U.S. Department of the Interior, Office of Inspector General, 1849 C Street, NW., Washington DC 20240; (2) Office of Inspector General, 12030 Sunrise Valley Drive, Reston, VA 20191; (3) Office of Inspector General Regional Offices, Regional sub-offices (a current listing of these offices may be obtained by writing to the System Manager); and (4) Investigative site during the course of an investigation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current former and prospective employees of the Department of the Interior (''DOI''), complainants, witnesses, confidential and non-confidential informants, contractors, subcontractors, recipients of federal assistance or funds and their contractor/subcontractors and employees, alleged violators of DOI rules and regulations, union officials, individuals investigated and interviewed, persons suspected of violations of administrative, civil and criminal provisions, grantees, sub-grantees, lessees, licensees, and other persons engaged in business with the DOI or having contact with the DOI or geographical areas under its jurisdiction.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to investigations conducted by the OIG, including:

(1) Complaints, requests to investigate, and administrative referrals;

(2) Records of case initiation including the following data fields: case number, title of case, dates, offices/personnel assigned, summary;

(3) Documents, statements, and information of any kind gathered through investigation;

(4) Reports, correspondence, notes and memoranda generated by OIG regarding investigations;

(5) Records on complainants, subjects, victims, witnesses containing the following data fields: name, status as government employee, social security number, birth date, birth place, aliases, group affiliation, employment information, government employment information, government employee type, grade, agency, address, phone number, e-mail address, and photo.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, 5 U.S.C. App. 3, 1–12, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to facilitate the OIG's various responsibilities under the Inspector General Act of 1978, as amended. The OIG is statutorily directed to conduct and supervise investigations relating to programs and operations of the Department of the Interior (DOI), to promote economy, efficiency, and effectiveness in the administration of such programs and operations, and to prevent and detect fraud, waste, and abuse in such programs and operations. Accordingly, records in this system are used within the DOI and OIG in the course of investigating individuals and entities suspected of misconduct, waste, fraud, and abuse, other illegal or unethical acts and in conducting related criminal prosecutions, civil proceedings, and administrative actions. These records are also used to fulfill reporting requirements, to maintain records related to the OIG's activities, and to prepare and issue reports to Congress, the DOI and its components, the Department of Justice, the public and other entities as appropriate within the mission of the OIG.

DISCLOSURES OUTSIDE DOI MAY BE MADE WITHOUT THE CONSENT OF THE INDIVIDUAL TO WHOM THE RECORD PERTAINS UNDER THE ROUTINE USES LISTED BELOW:

For purposes of these routine uses, references to DOI or the Department shall include OIG.

(1)(a) To any of the following entities or individuals, when the circumstances set forth in subparagraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party to litigation or prosecution or anticipate litigation or prosecution before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or matter or has an interest in the proceeding or matter:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee; or

(E) The United States, or a State, District, Tribe, Territory or other government or entity vested with prosecution authority; and

(ii) OIG deems the disclosure to be:

(A) Relevant and necessary to the proceeding or matter, including settlement discussions; and

(B) Compatible with the purpose for which the records were compiled.

(2) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

(3) To any criminal, civil, or regulatory law enforcement authority (whether federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(4) To an official of another federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(5) To federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(6) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. §§ 2904 and 2906.

(7) To state and local governments and tribal organizations to provide information needed in response to court

order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(8) To an expert, consultant, or contractor (including employees of the contractor) of DOI, that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

(9) 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; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(10) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(11) To the Department of the Treasury to recover debts owed to the United States.

(12) To the news media when the disclosure is compatible with the purpose for which the records were compiled.

(13) To a consumer reporting agency if the disclosure requirements of the Debt Collection Act, as outlined at 31 U.S.C. 3711(e)(1), have been met.

(14) To an individual or entity, to the extent necessary in order to seek information relevant to a decision by DOI concerning the hiring, assignment or retention of an individual or other personnel action, the issuance, renewal, or retention or revocation of a security clearance, the execution of a security or suitability investigation, the letting of a contract, or the issuance, retention or revocation of a license, grant, or other benefit.

(15) To an individual or entity, to the extent necessary in order to seek information or assistance relevant to an OIG investigation, audit, or evaluation.

(16) To a foreign government pursuant to an international treaty, convention, or executive agreement entered into by the United States.

(17) To an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in an investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, special studies of the civil service and other merit systems, review of Human Resources or component rules and regulations, investigation of alleged or possible prohibited personnel practices, including administrative proceedings involving any individual subject of an OIG or DOI investigation, and such other functions promulgated in 5 U.S.C. 1205–06.

(18) To a grand jury agent pursuant to a federal or state grand jury subpoena or in response to a prosecution request that such record or information is released for the purpose of its introduction to a grand jury.

(19) To the Office of Personnel Management (OPM) concerning information on pay and leave, benefits, retirement deductions, or other information necessary for OPM to carry out its personnel management functions and studies.

(20) To Treasury and to the DOJ, when the information is subject to an ex parte court order permitting the disclosure of return or return information (26 U.S.C. 6103(b)) by the Internal Revenue Service (IRS), or when disclosure is necessary to facilitate obtaining such an order.

(21) To the Federal Labor Relations Authority (FLRA) when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

(22) To the Office of Government Ethics (OGE) for any purpose consistent with that office's mission including the compilation of statistical data.

(23) To the public when the Inspector General determines that the disclosure would not reasonably be expected to constitute an unwarranted invasion of personal privacy, and:

(a) The matter under investigation or audit becomes public knowledge; or

(b) Disclosure is necessary to:

(1) Preserve confidence in the integrity of the OIG audit or investigative process: or

(2) Demonstrate the accountability of DOI officers, employees, or individuals covered by this system.

(24) To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

(25) To an individual who has been interviewed or contacted by OIG pursuant to an audit, investigation or evaluation, OIG may provide copies of that individual's statements, testimony, or records produced.

(26) To appropriate agencies, entities, and persons when OIG determines that disclosure may prevent or minimize a risk of harm to DOI programs, personnel or property, including but not limited to a risk of loss or misuse of funds granted or paid by the DOI to any other agency, entity or person.

(27) To the Council of the Inspectors General on Integrity and Efficiency (CIGIE), any successor entity, and other Federal agencies and Offices of Inspectors General, as necessary to respond to an authorized audit, investigation or review.

(28) To the Recovery Accountability and Transparency Board as necessary for any matters within the Board's jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and all other media including but not limited to (photographs, audio recordings, diskettes, and CD's) are stored in file cabinets in a secured area. Electronic records are maintained on a file server that is protected with user account access controls and other appropriate electronic security measures, and is physically located in locked facilities that are secured at all times by alarm systems and video surveillance cameras.

RETRIEVABILITY:

Records are retrievable by individual's name, case number, or document title.

SAFEGUARDS:

Access to paper records is restricted to authorized personnel on a need-to-know basis. During duty hours, paper records are located in file cabinets in OIG space occupied by authorized personnel. During non-duty hours, paper records and other physical media are maintained in locked cabinets located in appropriately secured OIG space. Access to electronic records is restricted to authorized personnel who use them for official purposes. Each person granted access to the system must be individually authorized to use the system. Security of the system and records therein is maintained through the use of passwords and other electronic security measures. Passwords

are changed on a cyclical basis. These computer servers are located in locked facilities that are secured at all times by alarm systems and video surveillance cameras. During non-duty hours the alarm system provides immediate notification of any attempted intrusion to OIG Information Technology personnel. All data exchanged between the servers and individual personal computers is encrypted. Backup tapes are stored in a locked and controlled room in a secure, off-site location. Measures have been taken to ensure that the handling of this information meets the requirements of the Department of the Interior's Privacy Act regulations, 43 CFR 2.51. A Privacy Impact Assessment was conducted and recently updated regarding the electronic records within OIG–2. The assessment verified that appropriate controls and safeguards are in place. Safeguards include, but are not limited to, a requirement restricting access to the system to OIG personnel who have a ''need to know'' and have been granted authority by the System Manager. The records and system security plan is prepared in a way to reduce the impact to the individual's privacy and to manage the system on a ''need to know'' basis according to the Privacy Act.

All personnel within OIG, including all personnel with access to records in OIG–2, are required to complete Privacy Act, Records Management, and IT Security Awareness training on an annual basis.

RETENTION AND DISPOSAL:

Records relating to persons covered by this system are retained for ten years after the completion of the investigation and/or action based thereon at the U.S. Department of the Interior, Office of Inspector General, 1849 C St., NW., Washington DC 20240. After ten years records are transferred to the National Archives and Records Administration. Subpoena log and subpoenaed records are destroyed or returned when no longer needed for agency use. Records are disposed of under applicable guidelines. *See* 384 DM 1. The records control schedule and disposal standards may be obtained by writing to the Systems Manager at the address below. The specific records schedule covering the system is found in the United States Department of the Interior, Office of Secretary, Comprehensive Records Disposal Schedule, Subcategory G, Audit and Investigation, Item 2, Investigative Records.

SYSTEM MANAGER AND ADDRESS:

Assistant Inspector General for Investigations, Office of Inspector General, U.S. Department of the Interior, 1849 C St., NW., Mail Stop 4428, Washington, DC 20240.

RECORD SOURCE CATEGORIES:

As an investigative agency focusing on the activities of the DOI, OIG collects information from all relevant sources. These include (1) The DOI, its bureaus and components, and all employees and agents; (2) other federal and non-federal government agencies, and their employees and agents, having business with the DOI; (3) non-government entities, and their employees and agents, having business with the DOI; (4) any entity or individual, including members of the public, who make complaints to OIG regarding activities of the DOI or who have information that is relevant to our investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2) the system is exempt from all of the provisions of 5 U.S.C. 552a except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) and regulations implementing these provisions. 43 CFR 2.79(a); *see* also 48 FR 37536–03 (August 18, 1983); 48 FR 37411–01 (August 18, 1983).

Pursuant to 5 U.S.C. 552a(k)(2), the system is exempt from 5 U.S.C. 552a subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) and regulations implementing these provisions. 43 CFR 2.79(b).

[FR Doc. 2011–25069 Filed 9–28–11; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–R–2011–N136; 70133–1265–0000–S3]

Selawik National Wildlife Refuge, Kotzebue, AK; Revised Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service (Service, USFWS), announce the availability of our revised comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the Selawik National Wildlife Refuge (Refuge). In this revised CCP, we describe how we will manage the Refuge for the next 15 years.

ADDRESSES: You may view or obtain copies of the revised CCP and FONSI by any of the following methods. You may request a paper copy, a summary, or a CD–ROM containing both.

You may request hard copies or a CD–ROM of the document.

Agency Web Site: Download a copy of the document at *http://alaska.fws.gov/nwr/planning/plans.htm.*

E-mail: selawik_planning@fws.gov; please include ''Selawik National Wildlife Refuge CCP'' in the subject line of the message.

Fax: Attn: Jeffrey Brooks, (907) 786–3965, or Lee Anne Ayres, (907) 442–3124.

U.S. Mail: Jeffrey Brooks, U.S. Fish and Wildlife Service Regional Office, 1011 E. Tudor Road Mailstop 231, Anchorage, AK 99503.

In-Person Viewing or Pickup: Call (907) 786–3357 to make an appointment during regular business hours at the above address; or call (907) 442–3799 to make an appointment during regular business hours at the Selawik Refuge Headquarters in Kotzebue, AK.

FOR FURTHER INFORMATION CONTACT: Jeffrey Brooks, Planning Team Leader, at the above address, by phone at (907) 786–3839, or by e-mail at *selawik_planning@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the revised CCP for Selawik National Wildlife Refuge. We started this process through a notice of intent in the **Federal Register** (73 FR 57143; October 1, 2008). We made available our draft CCP and Environmental Assessment (EA) and requested comments in a notice of availability in the **Federal Register** (75 FR 65026, October 21, 2010). The draft CCP and EA evaluated three alternatives for managing the Refuge for the next 15 years.

The Selawik National Wildlife Refuge was established by the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. Selawik Refuge straddles the Arctic Circle in northwestern Alaska, encompassing an area approximately the size of Connecticut. Refuge boundaries encompass approximately 3.2 million acres, of which approximately 2.5 million acres are administered by the U.S. Fish and Wildlife Service. Section 302(7)(B) of ANILCA states the purposes for which the Selawik Refuge was established: (1) To conserve fish and wildlife populations and habitats in their natural diversity; (2) to fulfill international treaty obligations of the United States with respect to fish and wildlife and their habitats; (3) to provide the opportunity for continued

subsistence use by local residents; and (4) to ensure water quality and necessary water quantity within the Refuge.

Access to the Refuge is possible only by boat, float- or ski-equipped airplane, snowmobile, or dogsled team. Snowmobile trails provide vital links among the Alaska Native villages of the region in winter and are usually passable to travelers through the end of April. Several of these villages are located within or near the Refuge boundary, including Buckland, Noorvik, Selawik, Kiana, Ambler, Kobuk, and Shungnak.

The Draft CCP and EA for the Refuge were developed consistent with Section 304(g) of ANILCA. Based on public scoping, we identified eight major planning issues: (1) Protection of fish, wildlife, habitats, and subsistence; (2) management of access to refuge lands for community residents and the visiting public; (3) maintaining hunting opportunities; (4) addressing local public use needs; (5) maintaining water quality and quantity; (6) maintaining the wild character of the Refuge and quality visitor experiences; (7) proactively addressing the uncertainties of climate change; and (8) providing more outreach and better communication for the public. We considered and evaluated all of these issues through the alternatives, goals, and objectives addressed or described in the draft CCP and the EA.

CCP Alternatives We Considered

The draft CCP and EA described and evaluated three alternatives for managing the Refuge. These alternatives followed much of the same general management direction. Alternative A (the No-Action Alternative), required under the National Environmental Policy Act (NEPA), described continuation of current management activities. Under Alternative A, management of the Refuge would have continued to follow direction described in the 1987 CCP and record of decision as modified by subsequent program-specific plans (*e.g.,* fisheries and fire management plans). Alternative A would have continued to protect and maintain the existing wildlife values, natural diversity, and ecological integrity of the Refuge. Human disturbances to fish and wildlife habitats and populations would have been minimal. Private and commercial uses of the Refuge would not have changed, and public uses employing existing access methods would have continued to be allowed. Opportunities would have been maintained to pursue traditional subsistence activities and recreational hunting, fishing, and other wildlife dependent activities. Opportunities would have been maintained to pursue research activities.

Alternative B (the Preferred Alternative) proposed to follow management direction described in the 1987 CCP and record of decision as modified by subsequent program-specific plans, but some of that management direction has been updated by changes in policy since the 1987 Selawik CCP was approved. Alternative B identified these specific changes in management direction and new goals and objectives for Refuge management that would be adopted regardless of which alternative is selected. Alternative B proposed continuing the policy of not making some public lands, which are intermingled with private lands, available for use by commercial guides and transporters whose clients are big game hunting. Alternative B proposed that a formal partnership be created between the Refuge and local entities to jointly maintain a shared facility of one or more buildings with capacity for office, meeting, and storage space in a community within the refuge. Alternative B proposed a study of traditional access for subsistence purposes. Alternative B proposed that local public use and access needs be addressed by creating formal partnerships between the Refuge and various local entities.

Alternative C would have continued to follow management direction described in Alternative A as modified by subsequent program-specific plans. Alternative C would have identified any specific changes or updates in management direction and adopted the new goals and objectives for Refuge management. Alternative C proposed that the Refuge manager could open or close some public lands, which are intermingled with private lands, to use by commercial guides and transporters whose clients are big game hunting. Alternative C proposed that the Refuge independently maintain a facility of one or more buildings with capacity for office, meeting, and storage space in a community within the refuge. Alternative C proposed the same study of traditional access for subsistence purposes. Alternative C would address local public use and access needs slightly differently from Alternative B by proposing to expand or improve some opportunities for public use and access on Refuge lands.

Changes Between Draft and Final Plan

The preferred alternative (Alternative B) was slightly modified as a result of public comments on the draft Plan. Use by commercial guides and transporters for big game hunting is not authorized by permit stipulation on refuge lands that are in close proximity to or intermingled with private lands in the northwest portion of the refuge. Alternative B was modified to authorize use by commercial guides and transporters in an additional 68,000 acres of the refuge. In addition, Alternative B was modified to indicate that, on a case-by-case basis, the refuge manager may authorize commercial use by special use permit for a part of the area where guiding is not authorized upon completion of a compatibility determination and a subsistence evaluation as required by ANILCA Section 810.

The management of shelter cabins on refuge lands in Alternative B was modified to include the following management. A formal partnership will be created among the Service, Selawik Refuge, Northwest Arctic Borough, NANA regional corporation, and local search and rescue organizations to formalize the roles and responsibilities of each partner in performing regular maintenance and/or replacement of shelter cabins on refuge lands. Members of the formal partnership will review the need for additional shelter cabins and appropriate location(s) for them, with the option of joint construction of an additional 1–2 shelter cabins or relocation of an existing shelter cabin on refuge lands.

Compliance With the National Environmental Policy Act

We are furnishing this notice to advise other agencies and the public of the availability of the final CCP and FONSI. Based on the review and evaluation of the information contained in the draft CCP and EA, we have determined that implementation of the final CCP does not constitute a major Federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act (NEPA). Therefore, an Environmental Impact Statement will not be prepared. Future site-specific proposals discussed in the final CCP requiring additional NEPA compliance will be addressed in separate planning efforts with full public involvement.

Dated: September 22, 2011.

Geoffrey L. Haskett,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. 2011–25068 Filed 9–28–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM004200 L13200000.GA0000]

Notice of Intent To Prepare a Resource Management Plan Amendment and Associated Environmental Assessment Addressing Four Federal Coal Lease Applications in Haskell and LeFlore Counties, OK; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Correction.

SUMMARY: The Bureau of Land Management published a Notice of Intent in the **Federal Register** on June 24, 2011 (76 FR 37145), concerning preparation of the Oklahoma Resource Management Plan Amendment and associated Environmental Assessment addressing Four Federal Coal Lease Applications in Haskell and LeFlore Counties, Oklahoma. The notice omitted a legal land description for a portion of the scoping area.

FOR FURTHER INFORMATION CONTACT: Laurence Levesque or Richard Wymer, Co-Team Leaders, BLM, Oklahoma Field Office, 7906 E 33rd Street, Suite 101, Tulsa, Oklahoma 74145–1352, phone (918) 621–4100.

Correction:

This action corrects the land description published on June 24, 2011 (76 FR 37145) by adding the following information:

On page 37146, column 1, after line 5, insert the following land description:

''T. 9 N., R. 21 E.,
Sec. 5, Lots 2, 3 & 4; S½ NW¼, N½ SW¼, and NW¼ SW¼ NE¼.
T. 10 N., R. 21 E.,
Sec. 32, S½, and S½ NW¼.

The area described contains 970.88 acres, according to the official plat of the survey of the said lands, on file with the BLM.''

Jesse Juen,

Acting State Director.

Authority: 40 CFR 1501.7; 43 CFR 1610.2.

[FR Doc. 2011–25051 Filed 9–28–11; 8:45 am]

BILLING CODE 4313–AW–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUTG02000. L14300000. FR0000.241A.00; UTU–83291]

Notice of Realty Action: Recreation and Public Purposes Act Classification and Conveyance of Public Land in Emery County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification and conveyance to Emery County under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, a parcel of public land in Emery County, Utah. Emery County proposes to establish a public shooting range facilities complex.

DATES: Interested parties may submit written comments regarding this classification and conveyance of public land until November 14, 2011.

ADDRESSES: Comments may be submitted to the Bureau of Land Management, Price Field Office, 125 South 600 West, Price, Utah, 84501 or e-mail: *UT_PR_Comments@blm.gov.* Please reference ''Conveyance of Federal Land to Emery County for Establishment of a Public Shooting Range'' on all correspondence.

FOR FURTHER INFORMATION CONTACT: Connie Leschin, BLM Price Field Office, by phone at (435) 636–3610 or by e-mail at *Connie_Leschin@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or questions with the above mentioned individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM has examined and found the following described public land suitable for classification and conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*) and 43 CFR part 2740. The following described land is hereby classified accordingly pursuant to the Taylor Grazing Act, as amended (43 U.S.C. 315(f)):

Salt Lake Meridian

T. 18 S., R. 8 E.
Sec. 9, SE¼SW¼.

The area described contains 40 acres, more or less, in Emery County.

This 40-acre parcel is proposed to be transferred to Emery County for use as a trap shooting range and establishment of a rifle range. The BLM conducted a Phase II Environmental Site Assessment in May of 2011. No hazardous substances, petroleum products, or recognized environmental conditions were identified on the 40 acre parcel; no further inquiry is needed to assess Recognized Environmental Conditions. The land is not needed for any Federal purpose of National significance. The classification is consistent with the BLM Price Field Office Record of Decision and Approved Resource Management Plan, Lands and Realty Decision LAR–11, dated October 31, 2008, and is in the public interest. An environmental assessment has been prepared to analyze the Emery County application and proposed plans of development and management. A conveyance would be subject to the provisions of the R&PP Act, applicable regulations of the Secretary of the Interior, and the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

A conveyance would also be subject to the following terms and conditions:

1. All valid existing rights.

2. An indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the land.

3. A limited reversionary provision stating that the title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that the patentee has not substantially developed the lands in accordance with the approved plan of development on or before the date 5 years after the date of conveyance. No portion of the land shall under any circumstance revert to the United States if any such portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, or release of any hazardous substance.

On September 29, 2011, the land described above is segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the R&PP Act and leasing under the mineral leasing laws. The grazing permittees have waived the 2-year notification period in accordance with 43 CFR 4110.4(b).

Classification Comments: Interested parties may submit comments involving the suitability of the land for a shooting facilities complex. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use (or uses) of the land, whether the use is consistent with local planning and zoning, or whether the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application, or any other factors not directly related to the suitability of the land for a shooting facilities complex.

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.

The BLM State Director will review any adverse comments. In the absence of any adverse comments, the classification will become effective on November 28, 2011. The land will not be available for conveyance until after the classification becomes effective. An Environmental Assessment (DOI–BLM–UT–G021–2009–0083) has been completed with a finding of no significant impact and is available at the address listed above.

Authority: 43 CFR 2741.5(h)

Juan Palma,

State Director.

[FR Doc. 2011–25059 Filed 9–28–11; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Wilderness and Backcountry Management Plan and Environmental Impact Statement for Isle Royale National Park, MI

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of a Final Wilderness and Backcountry Management Plan and Environmental Impact Statement (Plan/EIS)for Isle Royale National Park, Michigan (Isle Royale).

DATES: The final Plan/EIS will remain available for public review for 30 days following the publishing of the notice of availability in the **Federal Register** by the Environmental Protection Agency.

ADDRESSES: The Plan/EIS is available via the Internet through the NPS Planning, Environment, and Public Comment Web site (*http://parkplanning.nps.gov/ISRO*); click on the link to Wilderness and Backcountry Management Plan. You may also obtain a copy of the final Plan/EIS by sending a request to the Superintendent, Isle Royale National Park, 800 East Lakeshore Drive, Houghton, Michigan 49931.

SUPPLEMENTARY INFORMATION: The purpose of the Plan/EIS is to serve as a public document that outlines steps for preserving Isle Royale's wilderness character, natural resources, and cultural resources while also providing for the use and enjoyment of the park's wilderness and backcountry by current and future generations. It also serves as a management document that will provide accountability, consistency, and continuity for managing Isle Royale's wilderness and backcountry and this park's place in the NPS's wilderness management program.

The Plan/EIS addresses issues and provides guidelines for managing the wilderness and backcountry areas of the park, which encompass all areas of Isle Royale outside of the Developed and Open Water Zones. This Plan/EIS addresses a wide array of management issues, and identifies specific goals, objectives, and decisionmaking guidelines for administrative actions and visitor use. In many cases this Plan/EIS formalizes current NPS management practices in Isle Royale's wilderness and backcountry. However, several modifications and changes are proposed that are intended to bring management practices on Isle Royale into better compliance with NPS policies, improve visitor services, or generally improve wilderness and backcountry management in the park. This Plan/EIS does not propose any changes in the wilderness boundaries set forth in Isle Royale's 1976 Wilderness Legislation.

Adopting this Plan/EIS causes some changes in how the NPS manages wilderness and backcountry in Isle Royale, some of which will be readily apparent to the public, while others will be primarily operational. The NPS will institutionalize a Minimum Requirement process to guide and document decisions on appropriate tools for maintenance activities in the park's wilderness, appropriate research projects and field methods within wilderness, and appropriate administrative actions within the wilderness. The NPS will aim to make better use of research and monitoring to guide management through the creation and implementation of a coordinated monitoring plan, and will strive to increase staff training and accountability for wilderness management.

The most obvious changes from the public perspective are those that address crowding and visitor distribution, visitor information services, and resource conditions. Several issues were presented in the draft Plan/EIS with multiple alternatives for goals and management actions, which were developed with extensive public input. These issues are: (1) Managing overnight camping and boating in Isle Royale's wilderness and backcountry, including permitting and information services; (2) managing day use in the park's wilderness and backcountry; (3) managing campfires; (4) maintaining or removing the fire towers in the park's wilderness; and (5) maintaining or removing picnic tables from wilderness campgrounds. Chapter 2 outlines the details of all of the previously proposed changes, and identifies the NPS preferred alternative (the final, approved action alternative) for each of these issues.

The draft Plan/EIS proposed several changes in how Isle Royale's wilderness and backcountry are managed. The preferred alternatives were crafted with an intention of creating one cohesive management program, with management goals for each of several issues being complementary, not contradictory. The planning team's intention was to respond to public interest and the concerns of subject matter experts, and incorporate the best science available for guiding preservation of Isle Royale's resources and values. General goals included improving the quality of wilderness and backcountry experiences for visitors while still providing high public access to the park for appropriate types of recreation. Existing facilities could be used more efficiently, while unnecessary facilities would be removed from the wilderness.

The preferred alternatives in combination also strive to minimize adverse resource impacts, in many cases improving resource conditions that are currently showing degradation. Since Isle Royale is already a difficult and expensive park to visit, the preferred alternatives were also crafted with an interest in not further restricting general

public access to the park. The preferred alternative for managing overnight camping and boating on Isle Royale focused on more efficiently utilizing existing camping facilities through the creation of a backcountry office and advanced permitting. The intent is to expand visitor services for trip planning and reduce campground crowding to improve social and resource conditions in campgrounds. This could result in a decrease in visitor access to the backcountry for camping during the busiest weeks of the season. The preferred alternative for managing day use was crafted with an intention to allow an increase in day use and concessions lodging throughout the visitor season. Day tours would be managed to concentrate the majority of day visitors close to developed and frontcountry areas of the park and minimize adverse impacts to wilderness character and other critical resources.

The preferred alternatives in combination also aimed to minimize or reduce the impacts of development in the park's wilderness. Although the preferred alternative for overnight use would add one additional campsite at North Desor campground and a few rustic cabins in Rock Harbor, and the preferred alternative for day use would add three to five miles of new trail, no new campgrounds would be constructed other than those approved in the park's General Management Plan, up to two fire towers would be removed, and campfire rings would be located only where resource conditions could tolerate the associated impacts.

The Plan/EIS involves analysis of current conditions in the park and the likely impacts of implementing each of the alternatives, considering impacts to visitor use and experiences, wilderness character, natural resources, cultural resources, socioeconomics, and NPS operations and administration. In general, each of the alternatives would be expected to result in both beneficial and adverse impacts to park resources and values.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent Phyllis Green, Isle Royale National Park, at the address above or by telephone at 906–482–0984.

Dated: May 17, 2011.

Michael T. Reynolds,

Regional Director, Midwest Region.

[FR Doc. 2011–25062 Filed 9–28–11; 8:45 am]

BILLING CODE 4312–92–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–DPOL–0911–8477; 0004–SYP]

Meeting of the National Park System Advisory Board

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, and Parts 62 and 65 of title 36 of the Code of Federal Regulations, that the National Park System Advisory Board will meet December 1–2, 2011, in Key Largo, Florida. The agenda will include the review of proposed actions regarding the National Historic Landmarks Program and the National Natural Landmarks Program. Interested parties are encouraged to submit written comments and recommendations that will be presented to the Board. Interested parties also may attend the board meeting and upon request may address the Board concerning an area's national significance.

DATES: (a) Written comments regarding any proposed National Historic Landmarks matter or National Natural Landmarks matter listed in this notice will be accepted by the National Park Service until November 28, 2011 (b) The Board will meet on December 1–2, 2011.

Location: The meeting will be held in the Largo Key Ballroom of the Key Largo Bay Marriott Beach Resort, 103800 Overseas Highway, MM 103.8, Key Largo, Florida 33037, telephone 305–453–0000.

Information: (a) For information concerning the National Park System Advisory Board or to request to address the Board, contact Shirley Sears Smith, Office of Policy, National Park Service, 1201 I Street, NW., 12th Floor, Washington, DC 20005, telephone 202–354–3955, e-mail *Shirley_S_Smith@nps.gov.* (b) To submit a written statement specific to, or request information about, any National Historic Landmarks matter listed below, or for information about the National Historic Landmarks Program or National Historic Landmarks designation process and the effects of designation, contact J. Paul Loether, Chief, National Register of Historic Places and National Historic Landmarks Program, National Park Service, 1849 C Street, NW. (2280), Washington, DC 20240, e-mail *Paul_Loether@nps.gov.* (c) To submit a written statement specific to, or request information about, any National Natural Landmarks matter listed below, or for information about the National Natural Landmarks Program or National Natural Landmarks designation process and the effects of designation, contact Dr. Margaret Brooks, Program Manager, National Natural Landmarks Program, National Park Service, 225 N. Commerce Park Loop, Tucson, Arizona 85745, e-mail *Margi_Brooks@nps.gov.*

SUPPLEMENTARY INFORMATION: On December 1, the Board will convene its business meeting at 8 a.m., and adjourn for the day at 1 p.m. During the afternoon, the Board will tour sites within Everglades National Park. On December 2, the Board will reconvene the business meeting at 8 a.m., and adjourn at 5:30 p.m. During the course of the two days, the Board will be addressed by National Park Service Director Jonathan Jarvis; briefed by other National Park Service officials regarding education, leadership development and science; deliberate and make recommendations concerning National Historic Landmark Program and National Natural Landmarks Program proposals; and receive status briefings on matters pending before committees of the Board.

A. National Historic Landmarks (NHL) Program

NHL Program matters will be considered at the business meeting on the morning of December 1, during which the Board may consider the following:

Nominations for New NHL Designations

Arizona

- Fort Apache and Theodore Roosevelt School, Fort Apache, AZ.
- 1956 Grand Canyon TWA–United Airlines Aviation Accident Site, Grand Canyon NP, AZ.

California

- Carrizo Plain Archeological District, San Luis Obispo County, CA.
- Nuestra Señora Reina De La Paz, Kern County, CA.
- Drakes Bay Historic and Archeological District, Marin County, CA.

Colorado

- Trujillo Homesteads, Alamosa County, CO.

Florida

- Florida Southern College Historic District, Lakeland, FL.

Indiana

- Akima Pinšiwa A Wiiki (Chief Jean-Baptiste De Richardville House), Fort Wayne, IN.

Michigan

• Meadow Brook Hall, Rochester, MI.

Montana

• Deer Medicine Rocks, Rosebud County, MT.

New Mexico

• Mission San José de Los Jémez and Gíusewa Pueblo Site, Sandoval County, NM.

New York

• Gardner Earl Memorial Chapel and Crematorium, Troy, NY.
• Montauk Point Lighthouse, Suffolk County, NY.
• The Town Hall, New York, NY.
• USS *Slater*, Albany, NY

Pennsylvania

• Braddock Carnegie Library, Braddock, PA.

Puerto Rico

• Bacardi Distillery, Catano, PR.

Virginia

• Eyre Hall, Northampton County, VA.
• Saint Peter's Parish Church, New Kent County, VA.

Proposed Amendments to Existing NHL Designation

• Fort Benton Historic District, Fort Benton, MT (updated documentation and boundary clarification).

B. National Natural Landmarks (NNL) Program

NNL Program matters will be considered at the business meeting on the morning of December 1, during which the Board may consider the following:

Nominations for New NNL Designations

California

• Lake Shasta Caverns, Shasta County, CA.

West Virginia

• Ice Mountain, Hampshire County, WV.

The board meeting will be open to the public. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board also will permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time. Before including your address, telephone 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.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting in the 12th floor conference room, 1201 I Street, NW., Washington, DC.

Dated: September 23, 2011.

Bernard Fagan,

Chief, Office of Policy.

[FR Doc. 2011–25046 Filed 9–28–11; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation and are new, modified, discontinued, or completed since the last publication of this notice on July 27, 2011. From the date of this publication, future notices during this calendar year will be limited to new, modified, discontinued, or completed contract actions. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Water and Environmental Resources Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the

Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his or her designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in this Document

ARRA—American Recovery and Reinvestment Act of 2009
BCP—Boulder Canyon Project
Reclamation—Bureau of Reclamation
CAP—Central Arizona Project
CVP—Central Valley Project
CRSP—Colorado River Storage Project
FR—**Federal Register**
IDD—Irrigation and Drainage District
ID—Irrigation District
LCWSP—Lower Colorado Water Supply Project
M&I—Municipal and Industrial
NMISC—New Mexico Interstate Stream Commission
O&M—Operation and Maintenance
P–SMBP—Pick-Sloan Missouri Basin Program
PPR—Present Perfected Right
RRA—Reclamation Reform Act of 1982
SOD—Safety of Dams
SRPA—Small Reclamation Projects Act of 1956
USACE—U.S. Army Corps of Engineers
WD—Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

The Pacific Northwest Region has no updates to report for this quarter.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New Contract Actions

47. Contra Costa WD, CVP, California: Amendment to an existing O&M agreement to transfer O&M of the Contra Costa Rock Slough Fish Screen to the District. Initial construction funding provided through ARRA.

48. San Luis and Delta-Mendota Water Authority, CVP, California: Amendment to an existing O&M agreement to transfer O&M of the Delta-Mendota Canal California Aqueduct Intertie Project to the Authority. Initial construction funding provided through ARRA.

49. Irrigation water districts, individual irrigators and M&I water users, CVP, California: Temporary water service contracts for terms not to exceed 1 year for up to 100,000 acre-feet of surplus supplies of CVP water resulting from an unusually large water supply, not otherwise storable for project purposes, or from infrequent and otherwise unmanaged flood flows of short duration.

50. Irrigation water districts, individual irrigators, M&I and miscellaneous water users, California: Temporary Warren Act contracts for terms up to 5 years providing for use of excess capacity in CVP facilities for annual quantities exceeding 10,000 acre-feet.

51. Tehama-Colusa Canal Authority, CVP, California: Proposed transfer of O&M of the Red Bluff Fish Screen Project facilities to the Authority.

52. City of Redding, CVP, California: Proposed partial assignment of 30 acre-feet of the City of Redding's CVP water supply to the City of Shasta Lake for M&I use.

53. Langell Valley ID, Klamath Project; Oregon: Title transfer of lands and facilities of the Klamath Project.

54. Virginia L. Lempesis Separate Property Trust, CVP, California: Contract for the adjustment and settlement of certain claimed water rights in the Fresno Slough tributary to the San Joaquin River in fulfillment of such rights pursuant to contract No. I1r-1145 for the Purchase of Miller & Lux Water Rights, dated July 27, 1939.

Modified Contract Action

13. Byron-Bethany ID, CVP, California: Long-term operational exchange contract for exchange of nonproject water in the Delta-Mendota Canal.

Completed Contract Actions

15. Montecito WD, Cachuma Project, California: Contract to transfer title of the distribution system to the District. Title transfer authorized by Public Law 108–315, ''Carpinteria and Montecito Water Distribution Conveyance Act of 2004.'' Title transfer was completed on May 7, 2010.

18. A Canal Fish Screens, Klamath Project, Oregon: Negotiation of an O&M contract for the A Canal Fish Screens with Klamath ID. Contract executed on February 9, 2011.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

New Contract Action

18. Verizon California Inc., BCP, Arizona: Proposed Acknowledgement No. 2 to Contract No. 14–06–300–2505 to acknowledge a name change from Verizon California Inc., to Frontier Communications West Coast Inc.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

The Upper Colorado Region has no updates to report for this quarter.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59101, telephone 406–247–7752.

New Contract Actions

49. Southeastern Colorado Water Conservancy District, Fryingpan-Arkansas Project, Colorado: Consideration of amendatory contract and/or contract amendments.

50. Donala Water and Sanitation District, Fryingpan-Arkansas Project, Colorado: Consideration of a short- or long-term excess capacity contract.

51. Kensington Partners, Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Consideration of an amendment to the existing contract to reduce the amount of water service by 225 acre-feet of municipal/domestic water and assign the water to the Upper Eagle Regional Water Authority.

Completed Contract Actions

11. Security Water and Sanitation District, Fryingpan-Arkansas Project, Colorado: Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project. Contract executed on May 4, 2011.

12. City of Fountain, Fryingpan-Arkansas Project, Colorado:

Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project. Contract executed May 4, 2011.

16. Pueblo West Metropolitan District, Pueblo West, Fryingpan-Arkansas Project, Colorado: Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project. Contract executed May 4, 2011.

34. Colorado Springs Utilities, Fryingpan-Arkansas Project, Colorado: Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project and annual repayment for the operation, maintenance, and replacement costs of the single-purpose municipal works. Contract executed on May 4, 2011.

35. Garrison Diversion Conservancy District, Garrison Diversion Project, North Dakota: Intent to enter into temporary or interim irrigation or miscellaneous use water service contracts to provide up to 1,000 acre-feet of water annually for terms of up to 5 years. Contract executed on June 9, 2011.

45. Frenchman Valley ID, P–SMBP, Nebraska: Consideration of a request to amend the water service contract to change the billing due date to better account for when assessments are paid to the District. Contract executed on June 29, 2011.

Dated: August 17, 2011.

Roseann Gonzales,

Director, Policy and Administration.

[FR Doc. 2011–25002 Filed 9–28–11; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on September 22, 2011, a proposed Consent Decree in *United States and Coeur d'Alene Tribe* v. *Alice Consolidated Mines, Inc., et al.,* Civ. No. 11–00446–REB, was lodged with the United States District Court for the District of Idaho.

Concurrently with the proposed Consent Decree, the United States and the Coeur d'Alene Tribe filed a complaint naming seven defendants: Alice Consolidated Mines, Inc.; Hypotheek Mining and Milling Company; Callahan Consolidated Mines, Inc.; Constitution Mining Company; Golconda Mining Corp.; Highland Surprise Mining Company; and Nevada-Stewart Mining Company. The Complaint alleges that the Defendants are liable pursuant to Section 107(a) of CERCLA for response costs incurred and to be incurred by the United States and for natural resources damages in connection with releases of hazardous substances at or from Operable Unit 3 of the Bunker Hill Mining and Metallurgical Complex Superfund Site (''Site'') in northern Idaho. The Coeur d'Alene Tribe is a co-trustee of injured natural resources and a party to the proposed Consent Decree. The Consent Decree requires payments totaling $208,500, based on the defendant's financial resources. The Consent Decree also requires, among other things, that Defendants assign their interests in insurance policies to a trust, established for the benefit of EPA and the natural resource trustees, and pay two percent of net smelter returns generated from any future mining activities. The Consent Decree grants the Defendants a covenant not to sue for response costs, as well as natural resource damages, in connection with the Site.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Consent 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, DC 20044–7611. In either case, the comments should refer to *United States and Coeur d'Alene Tribe* v. *Alice Consolidated Mines, Inc., et al.* Civ. No. 11–00446–REB, and D.J. Ref. Nos. 90–11–3–128/13 and 90–11–3–128/14.

During the comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or 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, please enclose a check in the amount of $11.00 (Consent Decree without attachments) or $211.25 (Consent Decree with attachments) (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, please forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–25036 Filed 9–28–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 23, 2011, a proposed Consent Decree in *United States* v. *TRAC Enterprises, LLC,* Civil Action No. 2:11–cv–00652, was lodged with the United States District Court for the Southern District of West Virginia.

In this cost recovery action, brought pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9607, the United States, on behalf of the Administrator of the United States Environmental Protection Agency (''EPA''), sought reimbursement of costs incurred by EPA for response actions taken at or in connection with the release or threatened release of hazardous substances at the Custom Plating and Polishing Site (''the Site'') in Dunbar, Kanawha County, West Virginia.

The complaint alleged that EPA conducted an emergency removal action at the Site to address chemicals and wastes used in and generated by the electroplating and metal refinishing business that were found at the Site, including ''hazardous substances'' within the meaning of Section 101(14) of CERCLA, 42 U.S.C. 9601(14).

Under the proposed Consent Decree, TRAC Enterprises, LLC, the owner of the Site, will pay a total of $72,000 to the Hazardous Substance Superfund, in reimbursement of EPA's past response costs incurred through the date of entry of the Consent Decree. This amount was determined based on an analysis of TRAC Enterprise's ability to pay.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent 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, DC

20044–7611, and should refer to *United States* v. *TRAC Enterprises, LLC,* Civil Action No. 2:11–cv–00652, D.J. Reference Number 90–11–3–09958.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost for 24 pages) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–25041 Filed 9–28–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Council for the Advancement of Pyrethroid Human Risk Assessment, L.L.C.

Notice is hereby given that, on August 29, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Council for the Advancement of Pyrethroid Human Risk Assessment, L.L.C. (''CAPHRA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: AMVAC Chemical Corporation, Commerce, CA; BASF Corporation, Durham, NC; Bayer Animal Science, Pittsburgh, PA; Bayer CropScience, Research Triangle Park, NC; Botanical Resources Australia, Sandy Bay, Tasmania, Australia; Cheminova Inc., Arlington, VA; DuPont Crop Protection, Newark, DE; FMC Corporation, Philadelphia, PA; LG Life Sciences, Ltd., Clifton, VA; McLaughlin Gormley King Company, Minneapolis, MN; Meghmani, c/o Chemical Consultants International, Inc., Stilwell, KS; S.C. Johnson & Son, Inc., Racine, WI; Sumitomo Chemical Co., Ltd., Tokyo, Japan; Syngenta Crop Protection, LLC, Greensboro, NC; Valent BioSciences Corporation, Libertyville, IL; and Wellmark International (Central Life Sciences), Schaumburg, IL.

The general area of CAPHRA's planned activity is to generate and submit to the U.S. Environmental Protection Agency (''EPA'') studies necessary to address EPA's concerns for the potential for age-dependent sensitivity to Pyrethroids.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–24874 Filed 9–28–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Plastic Aerosol Research Group, L.L.C.

Notice is hereby given that, on August 29, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Plastic Aerosol Research Group, L.L.C. (''PARG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Aerofil Technology Inc, Sullivan, MO; Aptar Beauty & Home, Cary, IL; Berry Plastics Corporation, Evansville, IN; Clorox Service Company, Ocala, FL; Diversified CPC International, Inc., Channahon, IL; Formulated Solutions, LLC, Largo, FL; Graham Packaging Company, L.P., York, PA; I–K–I Manufacturing Co., Inc., Edgerton, WI; KIK Custom Products, Danville, IL; Plastic Technologies, Inc., Holland, OH; Precision Valve Corporation, Yonkers, NY; The Procter & Gamble Company, Cincinnati, OH; Reckitt Benckiser, LLC, Parsippany, NJ; S.C. Johnson & Son, Inc., Racine, WI; and Summit Packaging Systems, Inc., Manchester, NY.

The general area of PARG's planned activity is to generate tests, studies, assays, analyses, compilations, and other information regarding the transportation, manufacturing, and storage of plastic aerosol containers used to store specialty chemical household, personal care, and food and beverage products. PARG may work with a standard setting organization that may develop a document to meet standardization needs for such containers. Any standard developed would be informational and advisory only, and its use would be entirely voluntary.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–24875 Filed 9–28–11; 8:45 am]

BILLING CODE 4410–11–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting and Hearing Notice No. 9–11]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Wednesday, October 5, 2011: 10 a.m.—Oral hearings on objections to Commission's Proposed Decisions in Claim No. LIB–II–016; 11 a.m.—Claim Nos. LIB–II–125, LIB–II–126 and LIB–II–127; 3 p.m.—LIB–II–128, LIB–II–129, LIB–II–130 and LIB–II–131.

2 p.m.—Issuance of Proposed Decisions in claims against Libya

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Judith H. Lock, Executive Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Suite 6002, Washington, DC 20579. *Telephone:* (202) 616–6975.

Jaleh F. Barrett,

Chief Counsel.

[FR Doc. 2011–25125 Filed 9–26–11; 4:15 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1569]

National Institute of Justice Interview Room Recording Systems and License Plate Readers Workshop

AGENCY: National Institute of Justice.

ACTION: Notice of the Interview Room Recording Systems and License Plate Readers Workshops.

SUMMARY: The National Institute of Justice (NIJ) and the International Association of Chiefs of Police (IACP) are hosting two workshops in conjunction with the 118th Annual IACP Conference in Chicago, Ill. The focus of the workshops is the development of NIJ performance standards for Interview Room Recording Systems and License Plate Readers used by law enforcement agencies. Sessions are intended to inform manufacturers, test laboratories, certification bodies and other interested parties of these standards development efforts. Attendees in each workshop will be provided with an overview of the NIJ standards development process, work to date on the effort and a projected timeline for completion.

Please access the following webpage to register for the Interview Room Video Systems workshop: *http://www.surveymonkey.com/s/interviewroom_workshop_reg.*

Please access the following webpage to register for the License Plate Reader workshop: *http://www.surveymonkey.com/s/ALPR_workshop_reg.*

Note: The meeting room capacity is limited to 80 attendees per session and registration will close once this limit is reached.

DATES: Both workshops will be held on Saturday, Oct. 22, 2011. The session for Interview Room Recording Systems will take place from 8 to 9:30 a.m. The License Plate Reader session will take place from 10 to 11:30 a.m.

ADDRESSES: The workshops will take place at the Exchange Meeting Room of the InterContinental Chicago, 505 N. Michigan Ave., Chicago, IL 60611.

FOR FURTHER INFORMATION CONTACT: Ian Hamilton at *hamilton@theiacp.org.*

John H. Laub,

Director, National Institute of Justice.

[FR Doc. 2011–25099 Filed 9–28–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employee Retirement Income Security Act Prohibited Transaction Exemption 86–128

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration sponsored information collection request (ICR) titled, ''Employee Retirement Income Security Act Prohibited Transaction Exemption 86–128,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before October 31, 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, Employee Benefits Security Administration, 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: 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 Employee Retirement Income Security Act of 1974 (ERISA) section 406(b) and from the taxes imposed by Internal Revenue Code of 1986 (the Code) section 4975(a) and (b) 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 class exemption imposes the following information collection requirements on fiduciaries of employee benefit plans that effect or execute securities transactions (broker-dealers) and the independent plan fiduciary authorizing the plan to engage in the transactions with the broker-dealer (authorizing fiduciary) under the conditions contained in the exemption: (1) The authorizing plan fiduciary must provide the broker-dealer with an advance written authorization for the transactions; (2) the broker-dealer must provide the authorizing fiduciary with information necessary to determine whether an authorization should be made, including a copy of the exemption, a form for termination, a description of the broker-dealer's brokerage placement practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests; (3) the broker-dealer must provide the authorizing fiduciary with an annual termination form, at least annually, explaining that the authorization is terminable at will, without penalty to the plan, and that failure to return the form will result in continued authorization for the broker-dealer to engage in securities transactions on behalf of the plan; (4) the broker-dealer must provide the authorizing fiduciary with either (a) a conformation slip for each individual securities transaction within 10 days of the transaction containing the information described in Rule 10b–10(a)(1–7) under the Securities Exchange Act of 1934, 17 CFR 240.10b–10 or (b) a quarterly report containing certain financial information including the total of all transaction-related charges incurred by the plan; (5) the broker-dealer must provide the authorizing fiduciary with an annual summary of the confirmation slips or quarterly reports, containing all security transaction-related charges, the brokerage placement practices, and a portfolio turnover ratio; and (6) a

broker-dealer who is a discretionary plan trustee must provide the authorizing fiduciary with an annual report showing separately the commissions paid to affiliated brokers and non-affiliated brokers, on both a total dollar basis and a cents-per-share basis. These requirements are designed as appropriate safeguards to ensure the protection of the plan assets involved in the transactions, which, in the absence of the class exemption, would not be permitted. These safeguards rely on the prior authorization and monitoring of the broker-fiduciary's activities by a second plan fiduciary that is independent of the first.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1210–0059. The current OMB approval is scheduled to expire on September 30, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on May 24, 2011 (76 FR 30199).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1210–0059. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employee Benefits Security Administration.

Title of Collection: Employee Retirement Income Security Act Prohibited Transaction Exemption 86–128.

OMB Control Number: 1210–0059.

Affected Public: Private Sector—Businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 27,900.

Total Estimated Number of Responses: 1,199,880.

Total Estimated Annual Burden Hours: 63,800.

Total Estimated Annual Other Costs Burden: $736,800.

Dated: September 22, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–25044 Filed 9–28–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Miner's Claim for Benefits Under the Black Lung Benefits Act and Employment History

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Miner's Claim for Benefits Under the Black Lung Benefits Act and Employment History,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before October 31, 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, Office of Workers' Compensation Programs (OWCP), 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 Miner's Claim for Benefits Under the Black Lung Benefits Act Form (Form CM–911) is the standard application form filed by the miner for benefits under the Black Lung Benefits Act. All applicants, both miners and survivors, complete the Employment History (Form CM–911a) to list the coal miner's work history.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1240–0038. The current OMB approval is scheduled to expire on September 30, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on May 3, 2011 (76 FR 24918).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In

order to help ensure appropriate consideration, comments should reference OMB Control Number 1240–0038. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Office of Workers' Compensation Programs (OWCP).

Title of Collection: Miner's Claim for Benefits Under the Black Lung Benefits Act and Employment History.

OMB Control Number: 1240–0038.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 9500.

Total Estimated Number of Responses: 9500.

Total Estimated Annual Burden Hours: 6667.

Total Estimated Annual Other Costs Burden: $1771.

Dated: September 26, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–25121 Filed 9–28–11; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Representative Payee Report, Representative Payee Report, Short Form, Physician's/Medical Officer's Statement

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Representative Payee Report, Representative Payee Report, Short Form, Physician's/Medical Officer's Statement,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before October 31, 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, Office of Workers' Compensation Programs (OWCP), 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 Representative Payee Report (Form CM–623) and Representative Payee Report, Short Form (Form CM–623S) are used to ensure that benefits paid to a representative payee are being used for the beneficiary's well-being. The Physician's/Medical Officer's Statement (Form CM–787) is used to determine the beneficiary's capability to manage monthly Black Lung benefits.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1240–0020. The current OMB approval is scheduled to expire on September 30, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, *see* the related notice published in the **Federal Register** on May 3, 2011 (76 FR 24919).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1240–0020. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Office of Workers' Compensation Programs (OWCP).

Title of Collection: Representative Payee Report, Representative Payee Report, Short Form, Physician's/Medical Officer's Statement.

OMB Control Number: 1240–0020.

Affected Public: Individuals or households and private sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 2100.

Total Estimated Number of Responses: 2100.

Total Estimated Annual Burden Hours: 1642.

Total Estimated Annual Other Costs Burden: $0.

Dated: September 26, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–25094 Filed 9–28–11; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection; Apprenticeship Programs, Labor Standards for Registration; Extension With Revisions

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the collection of data about Title 20 CFR part 29, Apprenticeship Programs, Labor Standards for Registration with an expiration date of January 31, 2012.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before November 28, 2011.

ADDRESSES: Submit written comments to John V. Ladd, Administrator, Office of Apprenticeship, Room N–5311 Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone No.: 202–693–2796 (this is not a toll-free number). Fax: 202–693–3799. *E-mail: ladd.john@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The National Apprenticeship Act of 1937 (the Act), Section 50 (29 U.S.C. 50), authorizes and directs the Secretary of Labor ''to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Secretary of Education in accordance with Section 17 of Title 20.'' Section 50a of the Act authorizes the Secretary of Labor to ''publish information relating to existing and proposed labor standards of apprenticeship,'' and to ''appoint national advisory committees * * *'' (29 U.S.C. 50a). On October 29, 2008, ETA issued a final rule in the **Federal Register** that updated Title 29, CFR part 29. The regulations were revised for the first time since 1977. The rule became effective on December 29, 2008 and implemented changes to Title 29 CFR part 29 that will increase flexibility, enhance program quality and accountability, and promote apprenticeship opportunity in the 21st century, while continuing to safeguard the welfare of apprentices. The approved Office of Management and Budget (OMB) collection instrument, ETA Program Registration (Section I), and Apprentice Registration (Section II), expires January 31, 2012. Both sections are available electronically to facilitate the registration of programs and apprentices.

The changes to the currently approved Section I (ETA Program Registration) consist of the following:

- Instruction Method was revised to include electronic media (technology-based instruction and distance learning).
- Occupation Training Approach now includes the Hybrid Approach.
- The Competency-Based and Hybrid Approaches are explained in more detail. This includes the use of Interim Credentials—certificates that provide portable recognition of an apprentice's accomplishments after certain milestones are achieved during the training. A program sponsor who chooses to use interim credentials must identify and demonstrate how these credentials link to the components of the apprenticeable occupation, and establish a process for assessing an apprentice's competency. Interim Credentials are voluntarily chosen by the program sponsor and are based on standards applicable only to Competency-Based or Hybrid Occupations. The certificates are issued by the Registration Agency upon the program sponsor's request.
- Probation Length in hours clarifies that the probation period cannot exceed 25 percent of the length of the program or one year, whichever is shorter.
- Number of periods in the wage schedule is now based on the program sponsor's Training Occupation Approach. The Program Registration Date was revised.
- Provisional Registration, which is a one-year initial provisional approval for a new program, is provided to programs that meet the required standards for program registration. Programs may continue to be provisionally approved through the first training cycle until permanent registration is granted. Additionally, a five-year review must be conducted of the program to maintain its permanent registration.

Section II (Apprentice Registration) was revised to be aligned with the changes in Section I. These changes included the Occupation Training Approach, the Term of the Apprenticeship, Probationary Period, Term Remaining, and the Wage Schedule.

II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Recordkeeping and data collection activities regarding registered apprenticeship are by-products of the registration system. Organizations which apply for apprenticeship sponsorship enter into an agreement with the Federal government or cognizant State government to operate their proposed programs consistent with

29 CFR parts 29 and 30. Apprenticeship sponsors are not required to file reports regarding their apprentices other than individual registration and update information as an apprentice moves through their program. Program Registration, Section I, and Apprentice Registration, Section II, are used at different times, for different purposes, and with different individuals or entities. The information is not duplicative. Where necessary, this information will be repopulated electronically from the apprenticeship database to the revised Apprentice Registration—Section II, Part B: Sponsor field area.

Type of Review: Extension with revisions.

Title: Title 29 CFR Part 29, Apprenticeship Programs, Labor Standards for Registration.

OMB Number: 1205–0223.

Affected Public: Program Sponsors, State Apprenticeship Agencies, Applicants, Apprentices, Tribal Government.

Form(s): ETA Form 671: *Program Registration—Section I and Apprentice Registration—Section II.*

Total Annual Respondents: 139,466.

Annual Frequency: 1-time basis.

Total Annual Responses: 139,466.

Average Time per Response: .083 hours.

Estimated Total Annual Burden Hours: 15,193.

Total Annual Burden Cost for Respondents: $292,349.

Requirement ETA Form 671	Sec.	Total respondents	Frequency	Annual response	Average response time	Annual burden hours
Section I	29.3	1,000	1-time basis	1,000	.20 hr./Sponsor	200
Section II	29.3	67,240	1-time basis	67,240	.083 hr./Apprentice	5,581
ditto	29.6	69,400	1-time basis	69,400	.083 hr./Apprentice	5,760
ditto	29.5	1,000	1-time basis	1,000	2 hrs./Sponsor	2,000
		800	1-time basis	800	2 hrs./SAA	1,600
ditto	29.13	(Have sought recognition and are awaiting final recognition; no new State agency expected during 2012–2015)				
ditto	29.12	26	1-time basis	26	2 hrs./SAA	52
ditto	29.14	0	1-time basis	0	0	0
ditto	Totals	139,466		139,466		15,193

Total Respondents: 139,466 (2,000 sponsors + 136,640 apprentices + 826 SACs).

Total Burden Hours: 15,193 (2,200 sponsors + 11,341 apprentices + 1,652 SACs).

Burden estimates are experience-based.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: September 21, 2011.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2011–25081 Filed 9–28–11; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA—2011–0116]

Federal Advisory Council on Occupational Safety and Health

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

ACTION: Reopening of the record and extension of the nominations deadline.

SUMMARY: OSHA is reopening the record and extending the deadline for submitting nominations for membership on the Federal Advisory Council on Occupational Safety and Health (FACOSH) until October 31, 2011.

DATES: Nominations for FACOSH must be submitted (postmarked, sent, transmitted, or received) by October 31, 2011.

ADDRESSES: You may submit nominations for FACOSH, identified by Docket No. OSHA–2011–0116, by any one of the following methods:

Electronically: Nominations, including attachments, may be submitted electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting nominations;

Facsimile: If the nomination, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648;

Mail, express delivery, hand delivery, messenger or courier service: Submit three copies of nominations and supporting materials to the OSHA Docket Office, Docket No. OSHA–2011–0116, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (TTY number (877) 889–5627). Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m.—4:45 p.m., e.t.

Instructions: All nominations for FACOSH must include the agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2011–0116). Because of security-related procedures, submitting nominations by regular mail may result in a significant

delay in their receipt. Please contact the OSHA Docket Office, at the address above, for information about security procedures for submitting nominations by hand delivery, express delivery, and messenger or courier service. For additional information on submitting nominations, see 76 FR 16897.

Submissions in response to this **Federal Register** notice, including personal information provided, will be posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birth dates.

Electronic copies of this **Federal Register** notice as well as OSHA's July 7, 2011 notice requesting nominations for FACOSH membership are available at *http://www.regulations.gov.* Both notices, as well as news releases and other relevant information, are also available on OSHA's webpage at *http://www.osha.gov.*

FOR FURTHER INFORMATION CONTACT:

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

For general information: Mr. Francis Yebesi, OSHA, Office of Federal Agency Programs, Directorate of Enforcement Programs, Room N–3622, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2122; e-mail *ofap@dol.gov.*

SUPPLEMENTARY INFORMATION: OSHA is reopening the record and extending the deadline for submitting nominations for membership on FACOSH until October 31, 2011. OSHA is extending the FACOSH nominations deadline because of a lack of qualified candidates being nominated for FACOSH membership. For instructions and information about submitting nominations, see 76 FR 16897.

On July 7, 2011, OSHA published a **Federal Register** notice inviting interested parties to submit nominations for FACOSH membership by September 6, 2011 (76 FR 16897). OSHA requests nominations to fill six vacancies on FACOSH, three labor and three management members. One vacancy occurred during CY 2010 and five vacancies will occur in CY 2011. The Secretary of Labor will appoint new members to three-year terms.

FACOSH is authorized to advise the Secretary of Labor on all matters relating to the occupational safety and health of Federal employees (Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, Executive Orders 12196 and 13511). This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the Federal workforce and how to encourage the establishment and maintenance of effective occupational safety and health programs in each Federal department and agency.

Authority and Signature:

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, the Federal Advisory Committee Act (5 U.S.C. App), Executive Order 12196 and 13511, 29 CFR part 1960 (Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters), 41 CFR part 102–3, Secretary of Labor's Order 4–2010 (75 FR 55355, 9/10/2010).

Signed at Washington, DC on September 26, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–25042 Filed 9–28–11; 8:45 am]

BILLING CODE 4510–26–P

MILLENNIUM CHALLENGE CORPORATION

[MCC 11–09]

Notice of Quarterly Report (April 1, 2011–June 30, 2011)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the quarter April 1, 2011 through June 30, 2011, on assistance provided under section 605 of the Millennium Challenge Act of 2003 (22 U.S.C. 7701 *et seq.*), as amended (the Act), and on transfers or allocations of funds to other Federal agencies under section 619(b) of the Act. The following report will be made available to the public by publication in the **Federal Register** and on the Internet Web site of the MCC (*http://www.mcc.gov*) in accordance with section 612(b) of the Act.

ASSISTANCE PROVIDED UNDER SECTION 605

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Madagascar Year: 2011 Quarter 3 Total Obligation: $87,594,779 Entity to which the assistance is provided: MCA Madagascar Total Quarterly Expenditures [1]: $0				
Land Tenure Project	$29,560,718	Increase Land Titling and Security	$29,560,718	Area secured with land certificates or titles in the Zones. Legal and regulatory reforms adopted. Number of land documents inventoried in the Zones and Antananarivo. Number of land documents restored in the Zones and Antananarivo. Number of land documents digitized in the Zones and Antananarivo. Average time for Land Services Offices to issue a duplicate copy of a title. Average cost to a user to obtain a duplicate copy of a title from the Land Services Offices. Number of land certificates delivered in the Zones during the period. Number of new *guichets fonciers* operating in the Zones.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objective	Cumulative expenditures	Measures
Financial Sector Reform Project.	$23,704,219	Increase Competition in the Financial Sector.	$23,704,220	The 256 Plan Local d'Occupation Foncier-Local Plan of Land Occupation (PLOFs) are completed. Volume of funds processed annually by the national payment system. Number of accountants and financial experts registered to become CPA. Number of Central Bank branches capable of accepting auction tenders. Outstanding value of savings accounts from CEM in the Zones. Number of Micro-Finance Institutions (MFIs) participating in the Refinancing and Guarantee funds. Maximum check clearing delay. Network equipment and integrator. Real time gross settlement system (RTGS). Telecommunication facilities. Retail payment clearing system. Number of CEM branches built in the Zones. Number of savings accounts from CEM in the Zones. Percent of Micro-Finance Institution (MFI) loans recorded in the Central Bank database.
Agricultural Business Investment Project.	$13,854,448	Improve Agricultural Projection Technologies and Market Capacity in Rural Areas.	$13,854,449	Number of farmers receiving technical assistance. Number of marketing contracts of ABC clients. Number of farmers employing technical assistance. Value of refinancing loans and guarantees issued to participating MFIs (as a measure of value of agricultural and rural loans). Number of Mnistère de l'Agriculture,de l'Elevage et de la Pêche-Ministry of Agriculture, Livestock, and Fishing (MAEP) agents trained in marketing and investment promotion. Number of people receiving information from Agricultural Business Center (ABCs) on business opportunities.
Program Administration[2] and Control, Monitoring and Evaluation.	$18,475,394	.....	$19,662,387	
Pending subsequent reports[3].	.....	.....	$0	

FY2010 Madagascar post-compact disbursement related to final payment of audit expenses.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Honduras Year: 2011 Quarter 3 Total Obligation: $205,000,000 Entity to which the assistance is provided: MCA Honduras Total Quarterly Expenditures[1]: $0				
Rural Development Project.	$68,273,380	Increase the productivity and business skills of farmers who operate small and medium-size farms and their employees.	$68,264,510	Number of program farmers harvesting high-value horticulture crops. Number of hectares harvesting high-value horticulture crops. Number of business plans prepared by program farmers with assistance from the implementing entity, Total value of net sales. Total number of recruited farmers receiving technical assistance.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Transportation Project.	$120,591,240	Reduce transportation costs between targeted production centers and national, regional and global markets.	$120,584,457	Value of loans disbursed to farmers, agribusiness, and other producers and vendors in the horticulture industry, including Program Farmers, cumulative to date, Trust Fund Resources. Number of loans disbursed (disaggregated by trust fund, leveraged from trust fund, and institutions receiving technical assistance from ACDI–VOCA). Number of hectares under irrigation. Number of farmers connected to the community irrigation system. Freight shipment cost from Tegucigalpa to Puerto Cortes. Average annual daily traffic volume- CA–5. International roughness index (IRI)—CA–5. Kilometers of road upgraded—CA–5. Percent of contracted road works disbursed—CA–5. Average annual daily traffic volume—secondary roads. International roughness index (IRI)—secondary roads. Kilometers of road upgraded—secondary roads. Average annual daily traffic volume—rural roads. Average speed –Cost per journey (rural roads). Kilometers of road upgraded—rural roads. Percent disbursed for contracted studies. Value of signed contracts for feasibility, design, supervision and program management contracts. Kilometers (km) of roads under design. Number of Construction works and supervision contracts signed. Kilometers (km) of roads under works contracts.
Program Administration [2], and Control, Monitoring and Evaluation.	$16,135,380	.....	$15,086,464	
Pending subsequent reports [3].	.....	.....	$0	

The negative quarterly expenditure for Honduras is related to expense accruals. The accruals will be reversed in 2011 and applied to various projects and activities.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Cape Verde Year: 2011 Quarter 3 Total Obligation: $110,078,488 Entity to which the assistance is provided: MCA Cape Verde Total Quarterly Expenditures [1]: $1,038,897				
Watershed and Agricultural Support Project.	$12,011,603	Increase agricultural production in three targeted watershed areas on three islands.	$11,602,406	Productivity: Horticulture, Paul watershed. Productivity: Horticulture, Faja watershed. Productivity: Horticulture, Mosteiros watershed. Number of farmers adopting drip irrigation: All intervention watersheds (Paul, Faja and Mosteiros). Hectares under improved or new irrigation (All Watersheds Paul, Faja, and Mosteiros).

Projects	Obligated	Objective	Cumulative expenditures	Measures
Infrastructure Improvement Project.	$82,630,208	Increase integration of the internal market and reduce transportation costs.	$82,542,708	Irrigation Works: Percent contracted works disbursed. All intervention watersheds (Paul, Faja and Mosteiros). Number of reservoirs constructed in all intervention watersheds (Paul, Faja and Mosteiros) (incremental). Number of farmers trained. Travel time ratio: percentage of beneficiary population further than 30 minutes from nearest market. Kilometers of roads/bridges completed. Percent of contracted road works disbursed (cumulative). Port of Praia: percent of contracted port works disbursed (cumulative).
Private Sector Development Project.	$1,920,018	Spur private sector development on all islands through increased investment in the priority sectors and through financial sector reform.	$1,824,566	Micro-Finance Institutions portfolio at risk, adjusted (level).
Program Administration[2], and Control, Monitoring and Evaluation.	$13,516,659	.....	$12,542,777	
Pending subsequent reports[3].	.....	.....	$0	

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Nicaragua Year: 2011 Quarter 3 Total Obligation: $113,500,000 Entity to which the assistance is provided: MCA Nicaragua Total Quarterly Expenditures [1]: $2,462,277				
Property Regularization Project.	$7,180,454	Increase Investment by strengthening property rights.	$7,434,599	Automated database of registry and cadastre installed in the 10 municipalities of Leon. Value of land, urban. Value of land, rural. Time to conduct a land transaction. Number of additional parcels with a registered title, urban. Number of additional parcels with a registered title, rural. Area covered by cadastral mapping. Cost to conduct a land transaction.
Transportation Project.	$58,000,000	Reduce transportation costs between Leon and Chinandega and national, regional and global markets.	$57,540,040	Annual Average daily traffic volume: N1 Section R1. Annual Average daily traffic volume: N1 Section R2. Annual Average daily traffic volume: Port Sandino (S13). Annual Average daily traffic volume: Villanueva—Guasaule Annual. Average daily traffic volume: Somotillo-Cinco Pinos (S1). Annual average daily traffic volume: León-Poneloya-Las Peñitas. International Roughness Index: N–I Section R1. International Roughness Index: N–I Section R2. International Roughness Index: Port Sandino (S13. International roughness index: Villanueva—Guasaule. International roughness index: Somotillo-Cinco Pinos. International roughness index: León-Poneloya-Las Peñitas. Kilometers of NI upgraded: R1 and R2 and S13. Kilometers of NI upgraded: Villanueva—Guasaule.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Rural Development Project.	$32,875,845	Increase the value added of farms and enterprises in the region.	$31,345,307	Kilometers of S1 road upgraded. Kilometers of S9 road upgraded. Number of beneficiaries with business plans. Numbers of *manzanas (1 manzana = 1.7 hectares),* by sector, harvesting higher-value crops. Number of beneficiaries with business plans prepared with assistance of Rural Business Development Project. Number of beneficiaries implementing forestry business plans under Improvement of Water Supplies Activity. Number of Manzanas reforested. Number of Manzanas with trees planted.
Program Administration[2], Due Diligence, Monitoring and Evaluation.	$15,443,701	.....	$14,993,362	
Pending subsequent reports[3].	.....	.....	$1,759,671	

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Georgia Year: 2011 Quarter 3 Total Obligation: $395,300,000 Entity to which the assistance is provided: MCA Georgia Total Quarterly Expenditures[1]: $10,992,708				
Regional Infrastructure Rehabilitation Project.	$314,240,000	Key Regional Infrastructure Rehabilitated	$308,369,918	Household savings from Infrastructure Rehabilitation Activities. Savings in vehicle operating costs (VOC). International roughness index (IRI). Annual average daily traffic (AADT). Travel Time. Kilometers of road completed. Signed contracts for feasibility and/or design studies. Percent of contracted studies disbursed. Kilometers of roads under design. Signed contracts for road works. Kilometers of roads under works contracts. Sites rehabilitated (phases I, II, III)—pipeline. Construction works completed (phase II)—pipeline. Savings in household expenditures for all RID subprojects. Population Served by all RID subprojects. RID Subprojects completed. Value of Grant Agreements signed. Value of project works and goods contracts Signed. Subprojects with works initiated.
Regional Enterprise Development Project.	$52,040,800	Enterprises in Regions Developed	$51,736,506	Jobs Created by Agribusiness Development Activity (ADA) and by Georgia Regional Development Fund (GRDF). Household net income—ADA and GRDF. Jobs created—ADA. Firm income—ADA. Household net income—ADA. Beneficiaries (direct and indirect)—ADA. Grant agreements signed—ADA. Increase in gross revenues of portfolio companies. Increase in portfolio company employees. Increase in wages paid to the portfolio company employees. Portfolio companies.

Projects	Obligated	Objective	Cumulative expenditures	Measures
				Funds disbursed to the portfolio companies.
Program Administration [2], Due Diligence, Monitoring and Evaluation.	$20,577,650	.....	$24,507,904	
Pending subsequent reports [3].	.....	.....	$1,748,306	

In November 2008, MCC and the Georgian government signed a Compact amendment making up to $100 million of additional funds available to the Millennium Challenge Georgia Fund. These funds will be used to complete works in the Roads, Regional Infrastructure Development, and Energy Rehabilitation Projects contemplated by the original Compact. The amendment was ratified by the Georgian parliament and entered into force on January 30, 2009.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Vanuatu Year: 2011 Quarter 3 Total Obligation: $65,690,000 Entity to which the assistance is provided: MCA Vanuatu Total Quarterly Expenditures [1]: $380,075				
Transportation Infrastructure Project.	$60,127,374	Facilitate transportation to increase tourism and business development.	$60,072,138	Traffic volume (average annual daily traffic)—Efate Ring Road. Traffic Volume (average annual daily traffic)—Santo East Coast Road. Kilometers of road upgraded—Efate Ring Road. Kilometers of roads upgraded—Santo East Coast Road. Percent of MCC contribution disbursed to ''adjusted'' signed contracts of roads works; including approved variations.
Program Administration [2], Due Diligence, Monitoring and Evaluation.	$5,562,626	.....	$5,152,780	
Pending subsequent reports [3].	.....	.....	$19,948	

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Armenia Year: 2011 Quarter 3 Total Obligation: $235,650,000 Entity to which the assistance is provided: MCA Armenia Total Quarterly Expenditures [1]: $30,753,069				
Irrigated Agriculture Project (Agriculture and Water).	$153,221,708	Increase agricultural productivity Improve and Quality of Irrigation.	$139,001,654	Training/technical assistance provided for On-Farm Water Management. Training/technical assistance provided for Post-Harvest Processing. Loans Provided. Value of irrigation feasibility and/or detailed design contracts signed. Value of irrigation feasibility and/or detailed design contracts disbursed. Number of farmers using better on-farm water management. Number of enterprises using improved techniques. Value of irrigation feasibility and/or detailed design contracts signed. Additional Land irrigated under project. Value of irrigation feasibility and/or detailed design contracts signed. Value of irrigation feasibility and/or detailed design contracts disbursed.
Rural Road Rehabilitation Project.	$67,100,000	Better access to economic and social infrastructure.	$7,668,644	Average annual daily traffic on Pilot Roads. International roughness index for Pilot Roads. Road Sections Rehabilitated—Pilot Roads. Pilot Roads: Percent of Contracted Roads Works Disbursed of Works Completed.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Program Administration [2], Due Diligence, Monitoring and Evaluation.	$15,328,292	.....	$12,728,874	
Pending subsequent reports [3].	.....	.....	$272,768	

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Benin Year: 2011 Quarter 2 Total Obligation: $307,298,040 Entity to which the assistance is provided: MCA Benin Total Quarterly Expenditures [1]: $44,172,939				
Access to Financial Services Project.	$16,950,000	Expand Access to Financial Services	$10,833,594	Value of credits granted by Micro-Finance Institutions (at the national level). Value of savings collected by MFI institutions (at the national level). Average portfolio at risk >90 days of microfinance institutions at the national level. Operational self-sufficiency of MFIs at the national level. Number of institutions receiving grants through the Facility. Number of MFIs *inspected by Cellule Supervision Microfinance.*
Access to Justice Project.	$21,536,651	Improved Ability of Justice System to Enforce Contracts and Reconcile Claims.	$13,822,337	Average time to enforce a contract. Percent of firms reporting confidence in the judicial system. Passage of new legal codes. Average time required for Tribunaux de premiere instance-arbitration centers and courts of first instance (TPI) to reach a final decision on a case. Average time required for Court of Appeals to reach a final decision on a case. Percent of cases resolved in TPI per year. Percent of cases resolved in Court of Appeals per year. Number of Courthouses completed. Average time required to register a business (société). Average time required to register a business (sole proprietorship).
Access to Land Project.	$33,715,553	Strengthen property rights and increase investment in rural and urban land.	$23,621,948	Percentage of households investing in targeted urban land parcels. Percentage of households investing in targeted rural land parcels. Average cost required to convert occupancy permit to land title through systematic process. Share of respondents perceiving land security in the Conversions from Occupancy permit to land title (PH–TF) or Rural Land Plan (PFR) areas. Number of preparatory studies completed. Number of Legal and Regulatory Reforms Adopted. Amount of Equipment Purchased. Number of new land titles obtained by transformation of occupancy permit. Number of land certificates issued within MCA—Benin implementation. Number of PFRs established with MCA Benin implementation. Number of permanent stations installed. Number of stakeholders Trained. Number of communes with new cadastres.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Access to Markets Project.	$188,494,824	Improve Access to Markets through Improvements to the Port of Cotonou.	$162,219,275	Number of operational land market information systems. Volume of merchandise traffic through the Port Autonome de Cotonou. Bulk ship carriers waiting times at the port. Port design-build contract awarded. Annual number of thefts cases. Average time to clear customs Port meets—international port security standards (ISPS).
Program Administration[2], Due Diligence, Monitoring and Evaluation.	$46,601,012	.....	$34,819,037	
Pending subsequent reports[3].	.....	.....	$283,061	
Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Ghana Year: 2011 Quarter 3 Total Obligation: $547,009,000 Entity to which the assistance is provided: MCA Ghana Total Quarterly Expenditures [1]: $67,966,816				
Agriculture Project ..	$211,970,412	Enhance Profitability of cultivation, services to agriculture and product handling in support of the expansion of commercial agriculture among groups of smallholder farms.	$157,279,409	Number of farmers trained in commercial agriculture. Number of agribusinesses assisted. Number of preparatory land studies completed. Legal and regulatory land reforms adopted. Number of landholders reached by public outreach efforts. Number of hectares under production. Number of personnel trained. Number of buildings rehabilitated/constructed. Value of equipment purchased. Feeder roads international roughness index. Feeder roads annualized average daily traffic. Value of signed contracts for feasibility and/or design studies of feeder roads. Percent of contracted design/feasibility studies completed for feeder roads. Value of signed works contracts for feeder roads. Percent of contracted feeder road works disbursed. Value of loans disbursed to clients from agriculture loan fund. Value of signed contracts for feasibility and/or design studies (irrigation). Percent of contracted (design/feasibility) studies complete (irrigation). Value of signed contracts for irrigation works (irrigation). Rural hectares mapped. Percent of contracted irrigation works disbursed. Percent of people aware of their land rights in Pilot Land Registration Areas. Total number of parcels surveyed in the Pilot Land Registration Areas (PLRAs). Volume of products passing through post-harvest treatment.
Rural Development Project.	$74,662,857	Strengthen the rural institutions that provide services complementary to, and supportive of, agricultural and agriculture business development.	$63,929,201	Number of students enrolled in schools affected by Education Facilities Sub-Activity. Number of schools rehabilitated. Number of school blocks constructed. Distance to collect water.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Transportation Project.	$215,061,187	Reduce the transportation costs affecting agriculture commerce at sub-regional levels.	$138,979,621	Time to collect water. Incidence of guinea worm. Number of people affected by Water and Sanitation Facilities Sub-Activity. Number of stand-alone boreholes/wells/nonconventional water systems constructed/rehabilitated. Number of small-town water systems designed and due diligence completed for construction. Number of pipe extension projects designed and due diligence completed for construction. Number of agricultural processing plants in target districts with electricity due to Rural Electrification Sub-Activity. Trunk roads international roughness index. N1 International roughness index. N1 Annualized average daily traffic. N1 Kilometers of road upgraded. Value of signed contracts for feasibility and/or design studies of the N1. Percent of contracted design/feasibility studies completed of the N1. Value of signed contracts for road works N1, Lot 1. Value of signed contracts for road works N1, Lot 2. Trunk roads annualized average daily traffic. Trunk roads kilometers of roads completed. Percent of contracted design/feasibility studies completed of trunk roads. Percent of contracted trunk road works disbursed. Ferry Activity: annualized average daily traffic vehicles. Ferry Activity: annual average daily traffic (passengers). Landing stages rehabilitated. Ferry terminal upgraded. Rehabilitation of Akosombo Floating Dock completed. Rehabilitation of landing stages completed. Percent of contracted road works disbursed: N1, Lot 2. Percent of contracted road works disbursed: N1, Lot 2. Percent of contracted work disbursed: ferry and floating dock. Percent of contracted work disbursed: landings and terminals. Value of signed contracts for feasibility and/or design studies of Trunk Roads. Value of signed contracts for trunk roads.
Program Administration,[2] Due Diligence, Monitoring and Evaluation.	$45,314,544	.....	$ 37,055,231	
Pending subsequent reports.[3]	.....	.....	$2,067,683	

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: El Salvador Year: 2011 Quarter 3 Total Obligation: $460,940,000 Entity to which the assistance is provided: MCA El Salvador Total Quarterly Expenditures [1]: $29,540,735				
Human Development Project.	$99,596,078	Increase human and physical capital of residents of the Northern Zone to take advantage of employment and business opportunities..	$52,179,183	Employment rate of graduates of middle technical schools. Graduation rates of middle technical schools. Middle technical schools remodeled and equipped. New Scholarships granted to students of middle technical education. Students of non-formal training. Cost of water. Time collecting water. Number of households with access to improved water supply. Value of contracted water and sanitation works disbursed. Cost of electricity. Households benefiting with a connection to the electricity network. Household benefiting with the installation of isolated solar systems. Kilometers of new electrical lines with construction contracts signed. Population benefiting from strategic infrastructure.
Productive Development Project.	$71,824,000	Increase production and employment in the Northern Zone.	$26,483,228	Number of hectares under production with MCC support. Number of beneficiaries of technical assistance and training—Agriculture. Number of beneficiaries of technical assistance and training—Agribusiness. Value of agricultural loans to farmers/agribusiness.
Connectivity Project	$255,300,999	Reduce travel cost and time within the Northern Zone, with the rest of the country, and within the region.	$138,283,173	Average annual daily traffic. International roughness index. Kilometers of roads rehabilitated. Kilometers of roads with construction initiated.
Productive Development Project.	$71,678,455	.....	$46,031,645	
Program Administration [2] and Control, Monitoring and Evaluation.	$34,365,368	.....	$19,856,366	
Pending Subsequent Report [3].	.....	.....	$0	

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Mali Year: 2011 Quarter 3 Total Obligation: $460,811,164 Entity to which the assistance is provided: MCA Mali Total Quarterly Expenditures [1]: $53,263,586				
Bamako Senou Airport Improvement Project.	$181,253,028	.....	$53,347,640	Number of full time jobs at the ADM and firms supporting the airport. Average number of weekly flights (arrivals). Passenger traffic (annual average). Percent works complete. Time required for passenger processing at departures and arrivals. Percent works complete. Security and safety deficiencies corrected at the airport.
Alatona Irrigation Project.	$234,884,675	Increase the agricultural production and productivity in the Alatona zone of the ON.	$187,670,227	Main season rice yields. International roughness index (IRI) on the Niono-Goma Coura Route. Traffic on the Niono-Diabaly road segment.

Projects	Obligated	Objective	Cumulative expenditures	Measures
				Traffic on the Diabaly-Goma Coura road segment. Percentage works completed on Niono-Goma Coura road. Hectares under improved irrigation. Irrigation system efficiency on Alatona Canal. Percentage of contracted irrigation construction works disbursed. Number market gardens allocated in Alatona zones to PAPs or New Settler women. Net primary school enrollment rate (in Alatona zone). Percent of Alatona population with improved access to drinking water. Number of schools available in Alatona. Number of health centers available in the Alatona. Number of affected people who have been compensate. Number of farmers that have applied improved techniques. Hectares under production (rainy season). Hectares under production (dry season). Number of farmers trained. Value of agricultural and rural loans. Number of active MFI clients. Loan recovery rate among Alatona farmers.
Industrial Park Project.	$2,637,472	Terminated	$2,637,472	
Program Administration [2] and Control, Monitoring and Evaluation.	$42,035,989	.....	$27,219,796	
Pending Subsequent Report [3].	.....	.....	$1	

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Mongolia Year: 2011 Quarter 3 Total Obligation: $284,911,363 Entity to which the assistance is provided: MCA Mongolia Total Quarterly Expenditures [1]: $9,787,971				
Property Rights Project.	$27,201,061	Increase security and capitalization of land assets held by lower-income Mongolians, and increased peri-urban herder productivity and incomes.	$7,851,214	Number of legal and regulatory framework or preparatory studies completed (Peri-Urban and Land Plots). Number of Legal and regulatory reforms adopted. Number of stakeholders (Peri-Urban and Land Plots). Stakeholders Trained (Peri-Urban and Land Plots). Number of Buildings Built/Rehabilitated. Equipment purchased. Rural hectares Mapped. Urban Parcels Mapped. Leaseholds Awarded.
Vocational Education Project.	$47,355,638	Increase employment and income among unemployed and underemployed Mongolians.	$6,887,191	Rate of employment. Vocational school graduates in MCC-supported educational facilities. Percent of active teachers receiving certification training. Technical and vocational education and training (TVET) legislation passed.
Health Project	$38,974,817	Increase the adoption of behaviors that reduce non-communicable diseases (NCDIs) among target populations and improved medical treatment and control of NCDIs.	$15,738,216	Treatment of diabetes. Treatment of hypertension. Early detection of cervical cancer. Recommendations on road safety interventions available.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Roads Project	$86,740,123	More efficient transport for trade and access to services.	$9,368,186	Kilometers of roads completed. Annual average daily traffic. Travel time. International Roughness Index. Kilometers of roads under design. Percent of contracted roads works disbursed.
Energy and Environmental Project.	$46,966,205	Increased wealth and productivity through greater fuel use efficiency and decreasing health costs from air.	$3,319,432	Household savings from decreased fuel costs. Product testing and subsidy setting process adopted. Health costs from air pollution in Ulaanbaatar. Reduced particulate matter concentration. Capacity of wind power generation.
Rail Project	$369,560	Terminated	$369,560	Terminated.
Program Administration [2] and Control, Monitoring and Evaluation.	$37,303,959	.....	$15,795,799	
Pending subsequent reports [3].	.....	.....	$129,924	

In late 2009, the MCC's Board of Directors approved the allocation of a portion of the funds originally designated for the rail project to the expansion of the health, vocational education and property right projects from the rail project, and the remaining portion to the addition of a road project.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Mozambique Year: 2011 Quarter 3 Total Obligation: $506,924,053 Entity to which the assistance is provided: MCA Mozambique Total Quarterly Expenditures [1]: $12,222,176				
Water Supply and Sanitation Project.	$207,385,393	Increase access to reliable and quality water and sanitation facilities.	$18,788,444	Percent of urban population with improved water sources. Time to get to non-private water source. Percent of urban population with improved sanitation facilities. Percent of rural population with access to improved water sources. Number of private household water connections in urban areas. Number of rural water points constructed. Number of standpipes in urban areas. Five cities: Final detailed design submitted. Three cities: Final detailed design submitted.
Road Rehabilitation Project.	$176,307,480	Increase access to productive resources and markets.	$5,762,733	Kilometers of road rehabilitated. Namialo—Rio Lúrio Road—Metoro: Percent of feasibility, design, and supervision contract disbursed. Rio Ligonha-Nampula: Percent of feasibility, design, and supervision contract disbursed. Chimuara-Nicoadala: Percent of feasibility, design, and supervision contract disbursed. Namialo—Rio Lúrio: Percent of road construction contract disbursed. Rio Lúrio—Metoro: Percent of road construction contract disbursed. Rio Ligonha—Nampula: Percent of road construction contract disbursed. Chimuara-Nicoadala: Percent of road construction contract disbursed. Namialo-Rio Lúrio Road: Average annual daily traffic volume. Rio Lúrio-Metoro Road: Average annual daily traffic volume. Rio-Ligonha-Nampula Road: Average annual daily traffic volume.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Land Tenure Project	$39,068,307	Establish efficient, secure land access for households and investors.	$12,021,164	Chimuara-Nicoadala Road: Average annual daily traffic volume. Namialo-Rio Lúrio Road: Change in International Roughness Index (IRI). Rio Lúrio-Metoro Road: Change in International Roughness Index (IRI). Rio-Ligonha-Nampula Road: Change in International Roughness Index (IRI). Chimuara-Nicoadala Road: Change in International Roughness Index (IRI). Time to get land usage rights (DUAT), urban. Time to get land usage rights (DUAT), rural. Number of buildings rehabilitated or built. Total value of procured equipment and materials. Number of people trained. Rural hectares mapped in Site Specific Activity. Urban parcels mapped. Rural hectares formalized through Site Specific Activity. Urban parcels formalized. Number of communities delimited and formalized. Number of urban households having land formalized.
Farmer Income Support Project.	$18,400,117	Improve coconut productivity and diversification into cash crop.	$7,524,289	Number of diseased or dead palm trees cleared. Survival rate of Coconut seedlings. Hectares under production. Number of farmers trained in pest and disease control. Number of farmers trained in crop diversification technologies. Income from coconuts and coconut products (estates). Income from coconuts and coconuts products (households).
Program Administration [2] and Control, Monitoring and Evaluation.	$65,782,756	.....	$18,600,247	
Pending Subsequent Report [3].	.....	.....	$237,220	

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Lesotho Year: 2011 Quarter 3 Total Obligation: $362,551,000 Entity to which the assistance is provided: MCA Lesotho Total Quarterly Expenditures [1]: $24,844,746				
Water Project	$164,027,999	Improve the water supply for industrial and domestic needs, and enhance rural livelihoods through improved watershed management.	$31,617,648	School days lost due to water borne diseases. Diarrhea notification at health centers. Households with access to improved water supply. Households with access to improved Latrines. Knowledge of good hygiene practices. Households with reliable water services. Enterprises with reliable water services. Households with reliable water services. Volume of treated water. Area re-vegetation.
Health Project	$122,398,000	Increase access to life-extending ART and essential health services by providing a sustainable delivery platform.	$40,025,988	People with HIV still alive 12 months after initiation of treatment. TB notification (per 100,000 pop.). People living with HIV/AIDS (PLWA) receiving Antiretroviral treatment. Deliveries conducted in the health facilities.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Private Sector Development Project.	$36,470,318	Stimulate investment by improving access to credit, reducing transaction costs and increasing the participation of women in the economy.	$9,811,161	Immunization coverage rate. Time required to enforce a contract. Value of commercial cases. Cases referred to Alternative Dispute Resolution (ADR) that are successfully completed. Portfolio of loans. Loan application processing time. Performing loans. Electronic payments—salaries. Electronic payments—pensions. Debit/smart cards issued. Mortgage bonds registered. Value of registered mortgage bonds. Clearing time—Country. Clearing time—Maseru. Land transactions recorded. Land parcels regularized and registered. People trained on gender equality and economic rights. Eligible population with ID cards. Monetary cost to process a lease application.
Program Administration [2] and Control, Monitoring and Evaluation.	$39,654,682	.....	$20,812,467	
Pending Subsequent Report [3].	.....	.....	$1,825,781	

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Morocco Year: 2011 Quarter 3 Total Obligation: $697,500,000 Entity to which the assistance is provided: MCA Morocco Total Quarterly Expenditures [1]: $53,438,747				
Fruit Tree Productivity Project.	$301,396,445	Reduce volatility of agricultural production and increase volume of fruit agricultural production.	$103,948,810	Number of farmers trained. Number of agribusinesses assisted. Number of hectares under production. Value of agricultural production.
Small Scale Fisheries Project.	$116,168,028	Improve quality of fish moving through domestic channels and assure the sustainable use of fishing resources.	$5,355,499	Landing sites and ports rehabilitated. Mobile fish vendors using new equipment. Fishing boats using new landing sites. Average price of fish at auction markets. Average price of fish at wholesale. Average price of fish at ports.
Artisan and Fez Medina Project.	$111,373,858	Increase value added to tourism and artisan sectors.	$12,219,985	Average revenue of Small and Micro Enterprise (SME) pottery workshops. Construction and rehabilitation of Fez Medina Sites. Tourist receipts in Fez. Training of potters.
Enterprise Support Project.	$33,850,000	Improved survival rate of new SMEs and INDH-funded income generating activities; increased revenue for new SMEs and INDH-funded income generating activities.	$10,350,505	Value added per enterprise. Survival rate after two years.
Financial Services Project.	$46,200,000	TBD	$19,643,716	Portfolio at risk at 30 days Portfolio rate of return Number of clients of Microcredit Associations (AMCs) reached through mobile branches.
Program Administration [2] and Control, Monitoring and Evaluation.	$88,511,669	.....	$33,868,620	
Pending Subsequent Report [3].	.....	.....	$2,951,353	

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Tanzania Year: 2011 Quarter 3 Total Obligation: $698,136,011 Entity to which the assistance is provided: MCA Tanzania Total Quarterly Expenditures [1]: $41,385,741				
Energy Sector Project.	$206,042,428	Increase value added to businesses	$57,730,373	Current power customers: Morogoro D1, Morogoro T1, Morogoro T2 & T3, Tanga D1, Tanga T1, Tanga T2 &T3, Mbeya D1, Mbeya T1, Mbeya T2 &T3, Iringa D1, Iringa T1, Iringa T2 & T3, Dodoma D1, Dodoma T1, Dodoma T2 & T3, Mwanza D1, Mwanza T1 and Mwanza T2 & T3. Transmission and distribution sub-station capacity: Morogoro, Tanga, Mbeya, Iringa, Dodoma and Mwanza. Collection efficiency (Morogoro). Collection efficiency (Tanga). Collection efficiency (Mbeya). Collection efficiency (Iringa). Collection efficiency (Dodoma). Collection efficiency (Mwanza). Technical and nontechnical losses (Morogoro). Technical and nontechnical losses (Tanga). Technical and nontechnical losses (Mbeya). Technical and nontechnical losses (Iringa). Technical and nontechnical losses (Dodoma). Technical and nontechnical losses (Mwanza).
Transport Sector Project.	$368,847,429	Increase cash crop revenue and aggregate visitor spending.	$121,978,880	International roughness index: Tunduma Sumbawanga. International roughness index: Tanga Horohoro. International roughness index: Namtumbo Songea. International roughness index: Peramiho Mbinga. Annual average daily traffic: Tunduma Sumbawanga. Annual average daily traffic: Tanga Horohoro. Annual average daily traffic: Namtumbo Songea. Annual average daily traffic: Peramiho Mbinga. Kilometers upgraded/completed: Tunduma Sumbawanga. Kilometers upgraded/completed: Tanga Horohoro. Kilometers upgraded/completed: Namtumbo Songea. Kilometers upgraded/completed: Peramiho Mbinga. Percent disbursed on construction works: Tunduma Sumbawanga. Percent disbursed on construction works: Tanga Horohoro. Percent disbursed on construction works: Namtumbo Songea. Percent disbursed on construction works: Peramiho Mbinga. Percent disbursed for feasibility and/or design studies: Tunduma Sumbawanga. Percent disbursed for feasibility and/or design studies: Tanga Horohoro. Percent disbursed for feasibility and/or design studies: Namtumbo Songea. Percent disbursed for feasibility and/or design studies: Peramiho Mbinga.

Projects	Obligated	Objective	Cumulative expenditures	Measures
				International roughness index: Pemba. Average annual daily traffic: Pemba. Kilometers upgraded/completed: Pemba. Percent disbursed on construction works: Pemba. Signed contracts for construction works (Zanzibar Rural Roads). Percent disbursed on signed contracts for feasibility and/or design studies: Pemba. Passenger arrivals: Mafia Island. Percentage of upgrade complete: Mafia Island. Percent disbursed on construction works: Mafia Island.
Water Sector Project	$65,692,144	Increase investment in human and physical capital and to reduce the prevalence of water-related disease.	$17,615,173	Number of domestic customers (Dar es Salaam). Number of domestic customers (Morogoro). Number of non-domestic (commercial and institutional) customers (Dar es Salaam). Number of non-domestic (commercial and institutional) customers (Morogoro). Volume of water produced (Lower Ruvu). Volume of water produced (Morogoro). Percent disbursed on feasibility design update contract Lower Ruvu Plant Expansion.
Program Administration [2] and Control, Monitoring and Evaluation.	$57,554,000	.....	$22,416,473	
Pending Subsequent Report [3].	.....	.....	$99,857	

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Burkina Faso Year: 2011 Quarter 3 Total Obligation: $480,943,569 Entity to which the assistance is provided: MCA Burkina Faso Total Quarterly Expenditures [1]: $1,123,783				
Roads Project	$194,130,681	Enhance access to markets through investments in the road network.	$3,899,270	Annual average daily traffic: Dedougou-Nouna. Annual average daily traffic: Nouna-Bomborukuy. Annual average daily traffic: Bomborukuy-Mali border. Kilometers of road under works contract. Kilometers of road under design/feasibility contract. Access time to the closest market via paved roads in the Sourou and Comoe (minutes). Kilometers of road under works contract. Kilometers of road under design/feasibility contract. Personnel trained in procurement, contract management and financial systems. Periodic road maintenance coverage rate (for all funds) (percentage).
Rural Land Governance Project.	$59,934,615	Increase investment in land and rural productivity through improved land tenure security and land management.	$10,413,294	Trend in incidence of conflict over land rights reported in the 17 pilot communes (Annual percentage rate of change in the occurrence of conflicts over land rights). Number of legal and regulatory reforms adopted. Number of stakeholders reached by public outreach efforts. Personnel trained.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Agriculture Development Project.	$141,910,059	Expand the productive use of land in order to increase the volume and value of agricultural production in project zones.	$7,337,544	Number of Services Fonciers Ruraux (rural land service offices) installed and functioning. Rural hectares formalized. Number of parcels registered in Ganzourou project area. New irrigated perimeters developed in Di (Hectares). Technical water management core teams (noyaux techniques) installed and operational in the two basins (Sourou and Comoe). Number of farmers trained. Number of agro-sylvo-pastoral groups which receive technical assistance. Number of loans provided by the rural finance facility. Volume of loans intended for agro-sylvo-pastoral borrowers (million CFA).
Bright II Schools Project.	$28,829,669	Increase primary school completion rates	$27,785,257	Number of girls/boys graduating from BRIGHT II primary schools. Percent of girls regularly attending (90% attendance) BRIGHT schools. Number of girls enrolled in the MCC/USAID-supported BRIGHT schools. Number of additional classrooms constructed. Number of teachers trained through 10 provincial workshops.
Program Administration [2] and Control, Monitoring and Evaluation.	$56,138,545	.....	$18,025,810	
Pending Subsequent Report [3].	.....	.....	$0	

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Namibia Year: 2011 Quarter 3 Total Obligation: $304,477,815 Entity to which the assistance is provided: MCA Namibia Total Quarterly Expenditures [1]: $2,528,498				
Education Project	$144,976,556	Improve the quality of the workforce in Namibia by enhancing the equity and effectiveness of basic.	$14,487,534	Percentage of students who are new entrants in grade 5 for 47 schools. Percent of contracted construction works disbursed for 47 schools Percent disbursed against design/supervisory contracts for 47 schools. Percentage of schools with a learner-textbook ration of 1 to 1 in science, math, and English. Number of textbooks delivered. Number of teachers and managers trained in textbook management, utilization, and storage. Percent disbursed against works contracts for Regional Study Resource Centers Activity (RSRCS). Percent disbursed against design/supervisory contracts for RSRCs. Number of vocational trainees enrolled through the MCA–N grant facility. Value of vocational training grants awarded through the MCA–N grant facility. Percent disbursed against construction, rehabilitation, and equipment contracts for Community Skills and Development Centres (COSDECS). Percent disbursed against design/supervisory contracts for COSDECS.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Tourism Project	$66,959,292	Grow the Namibian tourism industry with a focus on increasing income to households in communal.	$7,502,274	Percent of condition precedents and performance targets met for Etosha National Park (ENP) activity. Number of game translocated with MCA–N support. Number of unique visits on Namibia Tourism Board (NTB) website. Number of North American tourism businesses (travel agencies and tour operators) that offer Namibian tours or tour packages. Value of grants issued by the conservancy grant fund (Namibian dollars). Amount of private sector investment secured by MCA–N assisted conservancies (Namibian dollars). Number of annual general meetings with financial reports submitted and benefit distribution plans discussed.
Agriculture Project ..	$47,550,008	Enhance the health and marketing efficiency of livestock in the NCAs of Namibia and to increase income.	$9,660,832	Number of participating households registered in the Community-based Rangeland and Livestock Management (CBRLM) sub-activity. Number of grazing area management implementation agreements established under CBRLM sub-activity. Number of community land board members and traditional authority members trained. Number of cattle tagged with radio frequency identification (RFID) tags. Percent disbursed against works contracts for State Veterinary Offices. Percent disbursed against design/supervisory contracts for State Veterinary Offices. Value of grant agreements signed under Livestock Market Efficiency Fund. Number of Indigenous Natural Product (INP) producers selected and mobilized. Value of grant agreements signed under INP Innovation Fund.
Program Administration [2] and Control, Monitoring and Evaluation.	$44,991,959	.....	$10,511,378	
Pending Subsequent Report [3].	.....	.....	$3,189,460	

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Moldova Year: 2011 Quarter 3 Total Obligation: $262,000,000 Entity to which the assistance is provided: MCA Moldova Total Quarterly Expenditures [1]: $5,987,216				
Road Rehabilitation Project.	$132,840,000	Enhance transportation conditions	$318,427	Reduced cost for road users. Average annual daily traffic. Road maintenance expenditure. Kilometers of roads completed. Percent of contracted roads works disbursed. Kilometers of roads under works contracts. Resettlement Action Plan (RAP) implemented. Final design. Kilometers of roads under design.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Transition to High Value Agriculture Project.	$101,773,402	Increase incomes in the agricultural sector; Create models for transition to HVA in CIS areas and an enabling environment (legal, financial and market) for replication.	$5,484,912	Hectares under improved or new irrigation. Centralized irrigation systems rehabilitated. Percent of contracted irrigation feasibility and/or design studies disbursed. Value of irrigation feasibility and/or detailed design contracts signed. Water user associations (WUA) achieving financial sustainability. WUA established under new law. Revised water management policy framework—with long-term water rights defined—established. Contracts of association signed. Irrigation Sector Reform (ISRA) Contractor mobilized. Additionally factor of Access to Agricultural Finance (AAF) investments. Value of agricultural and rural loans. Number of all loans. Number of all loans (female). High value agriculture (HVA) Post-Harvest Credit Facility launched. HVA Post-Harvest Credit Facility Policies and Procedures Manual (PPM) Finalized. Number of farmers that have applied improved techniques (Growing High Value Agriculture Sales [GSH]). Number of farmers that have applied improved techniques (GHS) (female). Number of farmers trained. Number of farmers trained (female). Number of enterprises assisted. Number of enterprises assisted (female). GHS activity launched.
Program Administration [2] and Monitoring and Evaluation.	$27,386,598	.....	$1,473,847	
Pending Subsequent Report [3].	.....	.....	$1,395	

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Philippines Year: 2011 Quarter 3 Total Obligation: $433,910,000 Entity to which the assistance is provided: MCA Philippines Total Quarterly Expenditures [1]: $4,679,902				
Revenue Administration Reform Project.	$54,300,000	To be determined (tbd)	.....	tbd.
Community Development Grant.	$120,000,000	tbd	$19,836	tbd.
Roads Project	$214,493,000	tbd	$4,328,660	tbd.
Program Administration [2] and Monitoring and Evaluation.	$45,117,000	.....	.....	tbd.
Pending Subsequent Report [3].	.....	.....	$2,885,141	

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Senegal Year: 2011 Quarter 3 Total Obligation: $540,000,000 Entity to which the assistance is provided: MCA Senegal Total Quarterly Expenditures [1]: $2,083,818				
Road Rehabilitation Project.	$324,712,499	Expand Access to Markets and Services	$1,112,254	Tons of irrigated rice production. Kilometers of roads rehabilitated on the RN#2.

Projects	Obligated	Objective	Cumulative expenditures	Measures
				Annual average daily traffic Richard-Toll—Ndioum. Percentage change in travel time on the RN # 2. International Roughness Index on the RN#2 (Lower number = smoother road). Kilometers (km) of roads covered by the contract for the studies, the supervision and management of the RN#2. Kilometers of roads rehabilitated on the RN#6. Annual average daily traffic Ziguinchor—Tanaff. Annual average daily traffic Tanaff—Kolda. Annual average daily traffic Kolda—Kounkané. Percentage change in travel time on the RN # 6. International Roughness Index on the RN#6 (Lower number = smoother road). Kilometers (km) of roads covered by the contract for the studies, the supervision and management of the RN#6.
Irrigation and Water Resources Management Project.	$170,008,860	Improve productivity of the agricultural sector.	$23,857	Tons of irrigated rice production. Potentially irrigable lands area (Delta and Ngallenka). Hectares under production. Total value of feasibility, design and environmental study contracts signed for the Delta and the Ngallenka (including RAPs). Cropping intensity (hectares under production per year/cultivable hectares). Number of hectares mapped to clarify boundaries and land use types. Percent of new conflicts resolved. Number of people trained on land security tools.
Program Administration [2] and Monitoring and Evaluation.	$45,278,641	.....	$3,753,535	
Pending Subsequent Report [3].	.....	.....	$81,202	

[1] Expenditures are the sum of cash outlays and quarterly accruals for work completed but not yet paid or invoiced.
[2] Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.
[3] These amounts represent disbursements made that will be allocated to individual projects in the subsequent quarter(s) and reported as such in subsequent quarterly report(s).

619(b) Transfer or Allocation of Funds		
U.S. Agency to which Funds were Transferred or Allocated	Amount	Description of program or project
USAID	$0	Threshold Program

Dated: September 26, 2011.

T. Charles Cooper,

Vice President, Congressional and Public Affairs, Millennium Challenge Corporation.

[FR Doc. 2011–25119 Filed 9–28–11; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

Notice: (11–086).

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, Office of the Chief Information Officer, Mail Suite 2S65, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, Office of the Chief Information Officer, NASA Headquarters, 300 E Street, SW., Mail Suite 2S65, Washington, DC 20546, (202) 358–1351, *lori.parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this project is to assess if National Park Service (NPS) visitors, as well as visitors to other public lands, are benefiting from an interagency partnership, known as Earth to Sky, by measuring awareness and understanding of global climate change in visitors to NPS and other public land locations. An on-site survey will be administered to park visitors to assess their awareness and understanding of global climate change; meaning of and connection to park resources; and perception of trust in sources of information regarding global climate change. Data will be collected in a variety of NPS and other sites from June–Aug, 2010. Results will help NASA and other managers of the Earth to Sky partnership assess the success of the partnership efforts and help refine and encourage the continued collaboration.

II. Method of Collection

An on-site survey will be administered to visitors in order to collect the data.

III. Data

Title: An assessment of global climate change in visitors to National Park Service sites and other public lands.

OMB Number: 2700–0146.

Type of Review: Renewal.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,200.

Estimated Time per Response: Voluntary.

Estimated Total Annual Burden Hours: 322.5.

Estimated Total Annual Cost: $0.

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2011–25030 Filed 9–28–11; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0032]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on July 7, 2011 (76 FR 39906).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 9, Public Records.

3. *Current OMB approval number:* 3150–0043.

4. *The form number if applicable:* NRC Forms 509 and 509A.

5. *How often the collection is required:* On occasion.

6. *Who will be required or asked to report:* Individuals requesting access to records under the Freedom of Information (FOIA) or Privacy Acts (PA), through the Public Document Room (PDR), and submitters of information containing trade secrets or confidential commercial or financial information who have been notified that the NRC has made an initial determination that the information should be disclosed.

7. *An estimate of the number of annual responses:* 3,870.

8. *The estimated number of annual respondents:* 3,870.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,042.5.

10. *Abstract:* Title 10 of the *Code of Federal Regulations* (10 CFR) part 9, prescribes procedures for individuals making requests for records under the FOIA or PA, and through the PDR. It contains information collection requirements for requests to waive or reduce fees for searching for and reproducing records in response to FOIA requests; appeals of denied requests; and requests for expedited processing. The information required from the public is necessary to justify requests for waivers or reductions in searching or copying fees; or to justify expedited processing. Section 9.28(b) provides that if the submitter of information designated to be trade secrets or confidential commercial or financial information objects to the disclosure, he must provide a written statement within 30 days that specifies all grounds why the information is a trade secret or commercial or financial information that is privileged or confidential.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC *Web site: http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 31, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0043), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *CWhiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 23rd day of September, 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–25024 Filed 9–28–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0122]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a Federal Register notice with a 60-day comment period on this information collection on July 5, 2011 (76 FR 39132).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 36—Licenses and Radiation Safety Requirements for Irradiators.

3. *Current OMB approval number:* 3150–0158.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* Annually.

6. *Who will be required or asked to report:* Irradiator licensees licensed by NRC or an Agreement State.

7. *An estimate of the number of annual responses:* 79 (9 for reporting [1.3 NRC licensee and 7.8 Agreement State licensees] and 70 for recordkeepers [10 NRC licensees and 60 Agreement State licensees]).

8. *The estimated number of annual respondents:* 70 (10 NRC licensees and 60 Agreement State licensees).

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 32,690.

10. *Abstract:* Part 36 contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials for a variety of purposes in research, industry, and other fields. The subparts cover specific requirements for obtaining a license or license exemption, design and performance criteria for irradiators; and radiation safety requirements for operating irradiators, including requirements for operator training, written operating and emergency procedures, personnel monitoring, radiation surveys, inspection, and maintenance. Part 36 also contains the recordkeeping and reporting requirements that are necessary to ensure that the irradiator is being safely operated so that it does not pose any danger to the health and safety of the general public and the irradiator employees.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 28, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

OMB Reviewer: Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0158), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *CWhiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 23rd day of September, 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–25025 Filed 9–28–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0225]

Closure of the U.S. Nuclear Regulatory Commission's Two White Flint North Building Entrance

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of closure.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is providing notice that beginning Monday, October 3, 2011, all visitors to the NRC White Flint Complex headquarters shall be required to enter through the recently renovated One White Flint North (OWFN) building entrance lobby. Only NRC badged employees and contractors shall be permitted to use the Two White Flint North (TWFN) building entrance. NRC staff shall meet visitors in the OWFN lobby waiting area and escort them to their destination.

DATES: The TWFN building entrance shall be closed to all NRC visitors beginning Monday, October 3, 2011.

ADDRESSES: One White Flint North is located at 11555 Rockville Pike, Rockville, MD 20852–2738. Two White Flint North is located at 11545 Rockville Pike, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Gary Simpler, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5002, e-mail: *Gary.Simpler@nrc.gov.*

Dated at Rockville, Maryland, this 23rd day of September, 2011.

For the U.S. Nuclear Regulatory Commission.

Cindy Bladey,

Acting Director, Division of Administrative Services, Office of Administration.

[FR Doc. 2011–25061 Filed 9–28–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–0036; NRC–2009–0278]

Environmental Assessment and Finding of No Significant Impact for a License Amendment to Materials License No. SNM–33; Westinghouse Electric Company, LLC, Hematite Decommissioning Project, Hematite, MO

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: John J. Hayes, Senior Project Manager, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301–415–5928; fax number: 301–415–5369; e-mail: *John.Hayes@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Special Nuclear Material (SNM) License number SNM–33, issued to Westinghouse Electric Company, LLC (WEC) to authorize decommissioning of the former Hematite Fuel Cycle Facility in Hematite, Missouri for unrestricted use and termination of this license. The NRC has prepared an Environmental Assessment (EA) in support of this amendment in accordance with the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed amendment is to authorize the decommissioning of the licensee's Hematite, Missouri facility for unrestricted use to allow for license termination. The original special nuclear material license for the Hematite facility was issued to Mallinckrodt Chemical Works (MCW) on June 18, 1956. In April 2000, the Hematite facility was purchased by British Nuclear Fuels Limited (BNFL). At the time of the purchase, BNFL was the parent corporation to WEC and the Hematite operations were consolidated into the WEC nuclear operations. On August 12, 2009, WEC requested that NRC approve the decommissioning plan for the facility which, when completed, would permit the site to be released for unrestricted use. Final approval for release of the site for unrestricted use and license termination would be contingent upon the NRC staff's approval of the licensee's final status survey report and making the findings required by the Commission's regulations following completion of the licensee's decommissioning activate. The WEC's request for the proposed amendment was previously noticed in the **Federal Register** on December 8, 2009 with a notice of an opportunity to request a hearing.

The NRC staff has prepared an environmental assessment (EA) (Agency Documents Access and Management System (ADAMS) ML111020620) in support of this amendment. The NRC evaluated whether there are significant environment impacts related to the proposed action and considered whether the impacts were adverse or positive and evaluated the cumulative impacts. The proposed action is to excavate and remove an estimated 23,000 m^3 (30,000 yd^3) of contaminated waste and soil from known and suspected burial sites as well as contamination beneath building floor slabs and the site's evaporation pond. The waste will be shipped out of the state by train for disposal at an approved facility.

The EA evaluated the environmental impact that would result from the removal of concrete building slabs that remained from the previously approved building demolition phase of the site's decommissioning, the removal of buried waste, the removal of surface, subsurface soil and contaminated sediments. The primary areas of concern expressed by members of the public were the potential for ground and surface water contamination, the potential for exposure to members of the public to contamination and local impacts on transportation and traffic congestion. Other areas evaluated included impacts to ecological resources, air quality, socioeconomic, noise, historical and cultural sites and visual and scenic areas.

III. Finding of No Significant Impact

The regulatory basis for the unrestricted use is found in 10 CFR 20.1402 and is based on the total exposure to the average member of the most critical group. For the WEC site the most critical group is that of a resident farmer who lives on the site and obtains his food and drinking water from the site and inhales potentially contaminated air. The specific release criteria for all environmental pathways at the site is 25 mrem/yr expressed as the total effective dose equivalent (TEDE). The NRC has independently confirmed the WEC calculations contained in the site's DP demonstrate that the release criteria have been met and have documented in the NRC SER that the actions associated with the decommissioning can be done safely. The offsite transport of radioactively contaminated material by rail car to an offsite facility located in Idaho was also confirmed in the NRC evaluations and is of such low activity that it meets the NRC criteria for disposal at a non-NRC or Agreement State LLRM licensed disposal facility.

The results of these calculations confirm that the radiological environmental impacts from the proposed amendment are bounded by the impacts evaluated in NUREG–1496, ''*Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Facilities,*'' Vols. 1, 2, and 3, dated July 1997 (ADAMS ML042310492, ML042320379, and ML042330385) and NUREG–0170, ''*Final Environmental Statement on the Transportation of Radioactive Materials by Air and Other Modes,*'' Vols. 1 and 2, dated December 1977 (ADAMS ML022590355 and ML022590511). The staff has also found that the non-radiological impacts associated with the proposed amendment are not significant. On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, 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. The ADAMS accession numbers for the documents related to this notice are:

Document	ADAMS No.
Decommissioning Plan	ML092330123, ML092330125, ML092330127, ML092330129, ML092330131, and ML092330132.
Environmental Report	ML092870403 and ML092870405.
Radiological Characterization Report	ML092870496 and ML092870506.
Supplemental Characterization Report	ML093430818, ML093430819, ML093430821, and ML093430822.
Historical Site Assessment	ML092870417, and ML092870418.
Site Specific Soil Parameters	ML093430808.
Determination of Distribution Coefficients for Radionuclides of Concern at the Westinghouse Hematite Facility.	ML093430811.
Supplemental Analysis of Hydrogeologic Conditions in Overburden at Westinghouse Hematite Facility, Hematite, Missouri.	ML093430807.
NRC Staff Environmental Assessment	ML111020620.
NUREG–0170, "*Final Environmental Statement on the Transportation of Radioactive Materials by Air and Other Modes,"* Vols. 1 and 2, dated December 1977.	ML022590355 and ML022590511.
NUREG–1496, "*Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Facilities,"* Vols. 1, 2, and 3, dated July 1997.	ML042310492, ML042320379, and ML042330385.

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 23rd day of September, 2011.

For the Nuclear Regulatory Commission.

Paul Michalak,

Acting 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. 2011–25063 Filed 9–28–11; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Notice, Public Hearing, October 19, 2011

TIME AND DATE: 2 p.m., Wednesday, October 19, 2011.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing OPEN to the Public at 2 p.m.

PURPOSE: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation

PROCEDURES:

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 PM Friday, October 14, 2011. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 PM Friday, October 14, 2011. Such statement must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Written summaries of the projects to be presented at the October 27, 2011 Board meeting will be posted on OPIC's web site on or about Friday, October 7, 2011.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 408–0297, or via e-mail at *Connie.Downs@opic.gov.*

Dated: September 26, 2011.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2011–25124 Filed 9–26–11; 4:15 pm]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–78; Order No. 867]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Smyrna, New York post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): October 6, 2011; *deadline for notices to intervene:* October 18, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 21, 2011, the Commission received a petition for review of the Postal Service's determination to close the Smyrna post office in Smyrna, New York. The petition was filed by Marie Whaley (Petitioner) and is postmarked September 13, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–78 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 26, 2011.

Categories of issues apparently raised. Petitioner contends that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 6, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is October 6, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 18, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 6, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 6, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Emmett Rand Costich is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

September 21, 2011	Filing of Appeal.
October 6, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 6, 2011	Deadline for the Postal Service to file any responsive pleading.
October 18, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 26, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 15, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
November 30, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 7, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 11, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25013 Filed 9–28–11; 8:45 am]
BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–81; Order No. 870]

Post Office Closing

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Clarksville, New York post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): October 6, 2011; *deadline for notices to intervene:* October 18, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 21, 2011, the Commission received a petition for review of the Postal Service's determination to close the Clarksville post office in Clarksville, New York. The petition was filed online by Peter Henner, et al. (Petitioner) and included an application for suspension. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–81 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 26, 2011.

Categories of issues apparently raised. Petitioner contends that: (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); and (3) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 6, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is October 6, 2011.

Application for Suspension of Determination. In addition to his Petition, Peter Henner, et al. filed an application for suspension of the Postal Service's determination (*see* 39 CFR 3001.114). Commission rules allow for the Postal Service to file an answer to such application within 10 days after the application is filed. The Postal Service shall file an answer to the application no later than October 3, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 18, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file an answer to the application for suspension of the Postal Service's determination no later than October 3, 2011.

2. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 6, 2011.

3. Any responsive pleading by the Postal Service to this Notice is due no later than October 6, 2011.

4. The procedural schedule listed below is hereby adopted.

5. Pursuant to 39 U.S.C. 505, Patricia A. Gallagher is designated officer of the Commission (Public Representative) to represent the interests of the general public.

6. The Secretary shall arrange for publication of this Notice and Order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,
Secretary.

PROCEDURAL SCHEDULE

September 21, 2011	Filing of Appeal.
October 3, 2011	Deadline for the Postal Service to file an answer responding to application for suspension.
October 6, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 6, 2011	Deadline for the Postal Service to file any responsive pleading.
October 18, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 26, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 15, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
November 30, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 7, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 19, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25065 Filed 9–28–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–80; Order No. 869]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Tarrifville, Connecticut post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): October 6, 2011; *deadline for notices to intervene:* October 18, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 21, 2011, the Commission received two petitions for review of the Postal Service's determination to close the Tariffville post office in Tariffville, Connecticut. The first petition was filed by Mary A. Glassman on behalf of the Town of Simsbury. The second petition was filed by Theresa Salb. Both petitions are postmarked September 9, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–80 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 26, 2011.

Categories of issues apparently raised. Petitioners contend that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 6, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is October 6, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioners and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 18, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 6, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 6, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Cassandra L. Hicks is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

September 21, 2011	Filing of Appeal.
October 6, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 6, 2011	Deadline for the Postal Service to file any responsive pleading.
October 18, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 26, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 15, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
November 30, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 7, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 9, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25045 Filed 9–28–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–79; Order No. 868]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Algoma, Mississippi post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): October 6, 2011; *deadline for notices to intervene:* October 18, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 21, 2011, the Commission received a petition for review of the Postal Service's determination to close the Algoma post office in Algoma, Mississippi. The petition was filed by Phyllis McGregor (Petitioner) and is postmarked September 13, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–79 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 26, 2011.

Categories of issues apparently raised. Petitioner contends that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 6, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is October 6, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 18, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 6, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 6, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Jeremy L. Simmons is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

September 21, 2011	Filing of Appeal.
October 6, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 6, 2011	Deadline for the Postal Service to file any responsive pleading.
October 18, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 26, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 15, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
November 30, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 7, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 11, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25023 Filed 9–28–11; 8:45 am]

BILLING CODE 7710–FW–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology; Notice of Meeting: Open Regional Meeting of the President's Council of Advisors on Science and Technology, Working Group on Advanced Manufacturing

ACTION: Public Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for an open regional meeting of the President's Council of Advisors on Science and Technology (PCAST), Working Group on Advanced Manufacturing, and describes the functions of the Council and its Working Group.

DATES: October 14, 2011.

ADDRESSES: The meeting will be held at the Georgia Tech Hotel and Conference Center, 800 Spring Street, NW., Atlanta, GA 30308.

Type of Meeting: Open.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST), Working Group on Advanced Manufacturing will hold its first regional meeting at the Georgia Institute of Technology in Atlanta, Georgia from 8 a.m. to 2 p.m. on October 14, 2011.

Advanced manufacturing will provide the basis for high-quality jobs for Americans and sustain U.S. competitiveness in the 21st century. To ensure that the United States attracts manufacturing activity and remains a leader in knowledge production, PCAST recommended in its June 2011 ''Report to the President on Ensuring American Leadership in Advanced Manufacturing'' that the Federal government create a fertile environment for innovation and make investments to ensure that new technologies and design methodologies are developed in the United States, and that technology-based enterprises have the infrastructure to flourish here.

On the basis of that report, President Obama established PCAST's AMP Steering Committee to provide additional advice to the government on how to catalyze investment in and deployment of emerging technologies with the potential to transform U.S. manufacturing. In addition, the AMP Steering Committee is to identify the collaborative approaches needed to realize these opportunities. During this regional meeting, members of the public will have an opportunity to provide their thoughts on:

- Technology development.
- Education and workforce development.
- Facility and infrastructure sharing.
- Policies that could create a fertile innovation environment.

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast/amp.* Questions about the meeting agenda should be directed to *amp@ostp.gov*. For questions regarding the facility and location-focused questions, please contact those listed at *http://advancedmanufacturing.gatech.edu/contact.* Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House and from cabinet departments and other Federal agencies. *See* the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is administered by the Office of Science and Technology Policy (OSTP). PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology,

and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Meeting Accomodations: Individuals requiring special accommodation to access this public meeting should e-mail *amp@ostp.gov* at least ten business days prior to the meeting so that appropriate arrangements can be made.

Ted Wackler,

Deputy Chief of Staff.

[FR Doc. 2011–25000 Filed 9–28–11; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15c2–1; SEC File No. 270–418; OMB Control No. 3235–0485.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15c2–1, (17 CFR 240.15c2–1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15c2–1 prohibits the commingling under the same lien of securities of margin customers (a) with other customers without their written consent and (b) with the broker or dealer. The rule also prohibits the rehypothecation of customers' margin securities for a sum in excess of the customer's aggregate indebtedness. Pursuant to Rule 15c2–1, respondents must collect information necessary to prevent the rehypothecation of customer securities in contravention of the rule, issue and retain copies of notices of hypothecation of customer securities in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule, and to advise customers of the rule's protections.

There are approximately 102 respondents (*i.e.,* broker-dealers that carry or clear customer accounts that also have bank loans) that require an aggregate total of 2,295 hours to comply with the rule. Each of these approximately 102 registered broker-dealers makes an estimated 45 annual responses. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 2,295 burden hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: September 23, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25077 Filed 9–28–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–PX, SEC File No. 270–524, OMB Control No. 3235–0582.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is ''Form N–PX (17 CFR 274.129) under the Investment Company Act of 1940, Annual Report of Proxy Voting Record.'' Rule 30b1–4 (17 CFR 270.30b1–4) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) requires every registered management investment company, other than a small business investment company registered on Form N–5 (''Funds''), to file Form N–PX not later than August 31 of each year. Funds use Form N–PX to file annual reports with the Commission containing their complete proxy voting record for the most recent twelve-month period ended June 30.

The Commission estimates that there are approximately 2,500 Funds registered with the Commission, representing approximately 10,000 Fund portfolios, which are required to file Form N–PX.[1] The 10,000 portfolios are comprised of 6,200 portfolios holding equity securities and 3,800 portfolios holding no equity securities. The staff estimates that portfolios holding no equity securities require approximately a 0.17 hour burden per response and those holding equity securities require 7.2 hours per response. The overall estimated annual burden is therefore approximately 45,300 hours ((6,200 responses × 7.2 hours per response for equity holding portfolios) + (3,800 responses × 0.17 hours per response for non-equity holding portfolios)). Based on the estimated wage rate, the total cost to the industry of the hour burden for complying with Form N–PX would be approximately $14.5 million.

The Commission also estimates that portfolios holding equity securities will bear an external cost burden of $1,000 per portfolio to prepare and update Form N–PX. Based on this estimate, the

[1] The estimate of 2,500 Funds is based on the number of management investment companies currently registered with the Commission. We estimate, based on data from the Investment Company Institute and other sources, that there are approximately 5,700 Fund portfolios that invest primarily in equity securities, 500 ''hybrid'' or bond portfolios that may hold some equity securities, 3,200 bond Funds that hold no equity securities, and 600 money market Funds, for a total of 10,000 portfolios required to file Form N–PX.

Commission estimates that the total annualized cost burden for Form N–PX is $6.2 million (6,200 responses × $1,000 per response = $6,200,000).

The collection of information under Form N–PX is mandatory. The information provided under the form is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: September 23, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25076 Filed 9–28–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65389; File No. SR–Phlx–2011–101]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving Proposed Rule Change Regarding Streaming Quote Traders and Remote Streaming Quote Traders Entering Certain Option Day Limit Orders

September 23, 2011.

I. Introduction

On July 17, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow Streaming Quote Traders (''SQTs'') and Remote Streaming Quote Traders (''RSQTs'') to enter day limit orders. The proposed rule change was published for comment in the **Federal Register** on August 11, 2011.[3] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The purpose of the proposal is to amend two subsections of Exchange Rule 1080 to allow entry of day limit orders for the proprietary accounts of SQTs and RSQTs.

Current Rule 1080 (Phlx XL and XL II) discusses the Exchange's enhanced electronic order, trading, and execution system (the ''electronic interface''). The current iteration of the Exchange's electronic interface is known as Phlx XL II.[4] Rule 1080 states that it governs the orders, execution reports and administrative order messages transmitted between the offices of member organizations and the trading floors of the Exchange. Rule 1080 also discusses what agency and proprietary orders are eligible for entry into the Exchange's electronic interface.

Subsection (b)(i)(B)(2) states that the following types of orders for the proprietary account(s) of SQTs and RSQTs are eligible for entry via electronic interface: limit on opening, IOC, and ISO. Currently, there is no ability for SQTs and RSQTs to enter day limit orders in their proprietary accounts. The proposal allows day limit orders for the proprietary account(s) of SQTs and RSQTs to be entered pursuant to subsection (b)(i)(B)(2). The proposed change will promote consistency among ROTs by allowing SQTs and RSQTs to do what Rule 1080 and Commentary .04 now allow non-SQT ROTs to do: enter certain day limit orders (10 or more contracts) in their proprietary accounts.[5]

Commentary .04 of Rule 1080 states that orders for the proprietary accounts of SQTs, RSQTs and non-SQT ROTs may be entered for delivery via electronic interface through the use of Exchange approved proprietary systems of members that interface with the Exchange's electronic interface.[6] Currently, proprietary non-SQT ROT orders with a size of less than 10 contracts have to be submitted as IOC and larger orders may be submitted as day limit and other order types; while proprietary SQT and RSQT orders may only be submitted as IOC.

The Exchange is proposing to put all the ROTs (SQTs, RSQTs and non-SQT ROTs) on an equal footing. Specifically, the Exchange proposes to state in Commentary .04 that orders for the proprietary account(s) of SQTs, RSQTs, and non-SQT ROTs with a size of less than 10 contracts shall be submitted as IOC only. Thus, where SQT and RSQT orders under the current rule could only be submitted as IOC, the proposed change to Commentary .04 would allow these SQTs and RSQTs to enter non IOC orders (e.g. day orders) in proprietary accounts if they are for 10 or more contracts.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [7] and, in particular, the requirements of Section 6 of the Act.[8] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[9] in that the proposal has been designed to promote just and equitable principles of trade, and to protect investors and the public interest. The Commission believes that it is consistent with the Act for SQTs and RSQTs to enter non IOC orders (*e.g.* day orders) in proprietary accounts if they are for 10 or more contracts. The Commission believes that allowing these order types should help to enhance liquidity on the Exchange. The Commission notes that SQTs and RSQTs would still be required to comply with their electronic quoting obligations.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PHLX–20011–101) is approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65050 (August 5, 2011), 76 FR 49816.

[4] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32) (order approving Phlx XL II). Phlx XL II is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of Exchange-listed equity options, index options and U.S. dollar-settled foreign currency options orders to the Exchange trading floor. Rule 1080(a).

[5] For example, subsection (b)(i)(B)(1) allows non-SQTs and specialists to enter certain day limit orders (10 or more contracts) in their proprietary accounts.

[6] Such orders have to be for a minimum of one (1) contract.

[7] The Commission has considered the proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25071 Filed 9–28–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65388; File No. SR–FINRA–2011–051]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Create an Exemption From Certain Reporting Obligations Under the Equity Trade Reporting Rules for Certain Alternative Trading Systems

September 23, 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 September 16, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt new Rules 6183 and 6625 to provide FINRA with authority to exempt a member alternative trading system (''ATS'') that meets the specified criteria from the trade reporting obligation under the equity trade reporting rules. In addition, FINRA is proposing a conforming change to Rule 9610 to specify that FINRA has exemptive authority under proposed Rules 6183 and 6625.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA trade reporting rules require that over-the-counter (''OTC'') transactions in equity securities[3] between members be reported to FINRA by the ''executing party.''[4] ''Executing party'' is defined as the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction. An ATS, which term includes electronic communications networks, is the ''executing party'' and has the trade reporting obligation where the transaction is executed on the ATS.[5]

FINRA is proposing to adopt new Rules 6183 and 6625 to provide FINRA with authority to exempt, upon application and subject to specified terms and conditions, a member ATS from the trade reporting obligation under certain limited circumstances. FINRA will only grant an exemption where all of the conditions set forth in the proposed rule are satisfied.

First, trades must be between ATS subscribers that are both FINRA members. For any trades between non-members or a FINRA member and a non-member, the exemption will not apply, and the ATS will have the trade reporting obligation under FINRA rules.

The ATS also must demonstrate that it meets the following criteria. First, the member subscribers must be fully disclosed to one another at all times on the ATS. Second, although the system brings together the orders of buyers and sellers and uses established, non-discretionary methods under which such orders interact with each other, the system does not permit automatic execution. A member subscriber must take affirmative steps beyond the submission of an order to agree to a trade with another member subscriber. Third, the trade does not pass through any ATS account, and the ATS does not in any way hold itself out to be a party to the trade. Fourth, the ATS does not exchange shares or funds on behalf of the member subscribers, take either side of the trade for clearing or settlement purposes, including, but not limited to, at DTC or otherwise, or in any other way insert itself into the trade.

In addition, the ATS and the member subscribers must acknowledge and agree in writing that the ATS shall not be deemed a party to the trade for purposes of trade reporting and that trades shall be reported by the member subscriber that, as between the two member subscribers, would satisfy the definition of ''executing party'' under FINRA trade reporting rules. An ATS that is granted an exemption must obtain such written agreements from all of its member subscribers prior to relying on the exemption.[6]

Finally, the ATS must agree to provide to FINRA on a monthly basis, or such other basis as prescribed by FINRA, data relating to the volume of trades by security executed by the ATS's member subscribers using the ATS's system (*e.g.,* number of trades, number of shares traded and total settlement value for each security traded). Importantly, although an ATS exempted under the proposed rule will not have trade reporting obligations under FINRA rules, the trading occurring through the ATS is still considered volume of the ATS for purposes of, among other

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Specifically, these transactions are: (1) Transactions in NMS stocks, as defined in SEC Rule 600(b) of Regulation NMS, effected otherwise than on an exchange, which are reported through the Alternative Display Facility or a Trade Reporting Facility; and (2) transactions in OTC Equity Securities and Restricted Equity Securities, as those terms are defined in Rule 6420, which are reported through the OTC Reporting Facility.

FINRA notes that the proposed rule change applies to OTC transactions in equity securities only. It does not apply to TRACE-eligible securities, nor does it impact the reporting rules applicable to transactions in TRACE-eligible securities, which are subject to a separate reporting structure under the Rule 6700 Series.

[4] *See* Rules 6282(b), 6380A(b), 6380B(b) and 6622(b). For transactions between a member and a non-member or customer, the member must report the trade.

[5] *See* Securities Exchange Act Release No. 58903 (November 5, 2008), 73 FR 67905 (November 17, 2008) (Order Approving File No. SR–FINRA–2008–011); and *Regulatory Notice* 09–08 (January 2009). *See also, e.g.,* Trade Reporting Frequently Asked Questions, Sections 307 and 308, available at *http://www.finra.org/Industry/Regulation/Guidance/P038942.*

[6] FINRA reminds members of their books and records obligations under FINRA rules, the Exchange Act and applicable Exchange Act rules. Thus, any ATS that is granted an exemption under the proposed rule change would be required to retain the written agreements and be able to produce them to FINRA upon request.

things, the recordkeeping requirements of Rule 302 of SEC Regulation ATS [7] and determining whether the ATS triggers the Fair Access requirements under Rule 301(b)(5) of Regulation ATS or the Capacity, Integrity and Security of Automated Systems requirements of Rule 301(b)(6) of Regulation ATS. The ATS also must acknowledge that failure to report such data to FINRA, in addition to constituting a violation of FINRA rules, will result in revocation of any exemption granted pursuant to the proposed rule change.

Where an exemption is granted, the ATS will not be deemed a party to the trade for purposes of FINRA trade reporting rules and will not be identified in trade reports submitted to FINRA. As expressly stated in the proposed rule, the trade must be reported to FINRA by the member subscriber that, as between the two member subscribers, satisfies the definition of ''executing party'' under paragraph (b) of Rules 6282, 6380A, 6380B or 6622.[8] For example, FINRA member BD1 displays a quote through ATS X and member BD2 routes an order to BD1 for the price and size of BD1's quote using a messaging system provided by ATS X. BD1 does not subsequently re-route the order and executes the trade. Assuming that ATS X meets all of the criteria set forth in the proposed rule and has been granted an exemption by FINRA, it will not be deemed a party to the trade for trade reporting purposes and should not be identified as such in the trade report submitted to FINRA. In this example, BD1 is the ''executing party'' and has the obligation to report the trade between BD1 and BD2.

FINRA believes that the proposed rule change will reduce potential confusion and possible misreporting by clearly identifying the member with the trade reporting obligation in this instance. FINRA believes that an ATS that satisfies all conditions of the proposed rule change has a more limited involvement in the trade execution than the member subscribers and therefore the proposed exemption is appropriate in this narrow instance. FINRA expects that a large majority of ATSs will not qualify for the exemption, and the proposed rule change will not result in a change to their reporting. These ATSs will continue to report, as ''executing party,'' trades that are matched and executed on their systems.

FINRA also is proposing a conforming change to Rule 9610 to add proposed Rules 6183 and 6625 to the list of rules pursuant to which FINRA has exemptive authority.

FINRA is proposing that the proposed rule change will be effective on the date of Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will reduce potential confusion and possible misreporting and enhance market transparency by clearly identifying the member with the trade reporting obligation (i.e., the party to the trade that meets the definition of ''executing party'' for purposes of trade reporting to FINRA).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–051 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–051. 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 such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–051 and should be submitted on or before October 20, 2011.

[7] 17 CFR 242.300–303.

[8] FINRA notes that where an ATS has been granted an exemption under the proposed rule, the member subscribers, as the parties identified in the trade report, will be assessed regulatory transaction fees under Section 3 of Schedule A to the FINRA By-Laws and the Trading Activity Fee under FINRA By-Laws, Schedule A, § 1(b)(2). The ATS will not be assessed such fees.

[9] 15 U.S.C. 78*o*–3(b)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25072 Filed 9–28–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65387; File No. SR–BX–2011–034]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change Amending Chapter V, Section 31 of the Rules of the Boston Options Exchange Group, LLC To Establish Facilitation and Solicitation Auction Mechanisms

September 23, 2011.

I. Introduction

On June 17, 2011, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Chapter V (Doing Business on BOX), Section 31 (Block Trading) of the Rules of the Boston Options Exchange Group, LLC (''BOX''), to establish facilitation and solicitation auction mechanisms. The proposed rule change was published for comment in the **Federal Register** on June 29, 2011.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Facilitation Auction—The Facilitation Auction will allow Order Flow Providers (''OFPs'') on BOX to enter crossing transactions in which an OFP represents, as agent, an order (''Agency Order'') of 50 contracts or more and (a) is trading against the Agency Order as principal, and/or (b) has solicited an order to take the opposite side of the Agency Order. To utilize the Facilitation Auction, an OFP must be willing to execute the entire size of the Agency Order through the submission of a contra ''Facilitation Order.''

Upon the entry of an Agency Order and Facilitation Order into the Facilitation Auction, a broadcast message, which will include the proposed execution price of the cross (the ''Facilitation Price''), will be sent to Options Participants giving them one second to enter responses (''Responses'')[4] with the prices and sizes at which they would be willing to participate in the facilitation opposite the Agency Order. At the end of the one second period for the entry of Responses, the Agency Order will be automatically executed, as follows:

Unless there is sufficient size to execute the entire Agency Order at a price better than the Facilitation Price, Public Customer bids (offers) and Public Customer Responses on BOX at the time the Agency Order is executed that are priced higher (lower) than the Facilitation Price will be executed at the facilitation price. Non-Public Customer and Market Maker bids (offers) and Non-Public Customer and Market Maker Responses on BOX at the time the Agency Order is executed that are priced higher (lower) than the Facilitation Price will be executed against the Agency Order at their stated price.

The facilitating OFP will execute at least forty percent of the original size of the Facilitation Order, but only after better-priced bids (offers) and Responses on BOX, as well as Public Customer bids (offers) and Responses at the facilitation price, are executed in full. After the facilitating OFP has executed its forty percent, Non-Public Customer and Market Maker bids (offers) and Responses on BOX at the Facilitation Price will participate in the execution of the Agency Order based upon price and time priority.[5]

Solicitation Auction—The Solicitation Auction will allow OFPs to attempt to execute Agency Orders of 500 or more contracts against contra orders that the OFP has solicited (''Solicited Orders'').[6] Executions will occur only if the price is at or between the national best bid or offer (''NBBO''). Each Agency Order entered into the Solicitation Auction must be an all-or-none order.

When a proposed solicited cross is entered into the Solicitation Auction, BOX will broadcast a message, which will include the proposed execution price of the cross, to Options Participants, and they will have one second to enter Responses with the prices and sizes at which they would be willing to participate in the execution of the Agency Order. At the end of the one second period for the entry of Responses, the Agency Order will be automatically executed in full or cancelled.

The Agency Order will be executed against the Solicited Order at the proposed execution price unless (a) There is sufficient size to execute the entire Agency Order at a better price or prices, or (b) there is a Public Customer order resting on the BOX Book at a price equal to or better than the proposed execution price within the depth of the BOX Book that would have traded with the Agency Order if the Agency Order had been submitted to the BOX Book instead of to the mechanism (a ''Book Priority Public Customer Order'').[7]

If there is sufficient size to execute the entire Agency Order at a better price or prices at the time of execution, the Agency Order will be executed at the improved price(s) and the Solicited Order will be cancelled. The aggregate size of all bids (offers) and Responses at each price will be used to determine whether the entire Agency Order can be executed at an improved price (or prices).[8]

If there is not sufficient size to execute the entire Agency Order at a better price or prices, whether the Agency Order will be executed against the Solicited Order at the proposed execution price depends on whether there is one or more Book Priority Public Customer Order(s) on the BOX Book at the time of execution. If no such Book Priority Public Customer Orders are on the BOX Book at the time of execution, the Agency Order will be executed against the Solicited Order at the proposed execution price.[9] However, if there is one or more Book Priority Public Customer Orders on the Book, then BOX will calculate whether sufficient size exists to execute the Agency Order at its proposed price. In making this calculation, the Exchange will include the aggregate size of all bids (offers) on the BOX Book at or better than the proposed execution price but exclude Responses.[10]

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64734 (June 23, 2011), 76 FR 38226 (''Notice'').

[4] Responses are permitted to be entered on behalf of any customer.

[5] The Exchange provided a more detailed explanation regarding the Facilitation Auction in the Notice. *See* Notice, *supra* note 3.

[6] The Exchange provided a more detailed explanation of how the Solicitation Auction will work, with examples, in the Notice. *See* Notice, *supra* note 3.

[7] *See* chapter V, Section 31(b)(ii)(1) of the BOX Rules.

[8] *See* chapter V, section 31(b)(ii)(3) of the BOX Rules.

[9] *See* chapter V, section 31(b)(ii)(1) of the BOX Rules. In addition, the Agency Order will not be executed against the Solicited Order unless the execution price is equal to or better than the NBBO at the time of execution. If an execution would take place at a price that is inferior to the best bid or offer on BOX or the NBBO, both the Solicited Order and Agency Order will be cancelled. *Id.* Thus, a Solicited Order cannot trade through a better price on an away market or on the BOX Book.

[10] *See* chapter V, section 31(b)(ii)(2) of the BOX Rules.

After this calculation, if there is sufficient size available on the BOX Book, including non-public customer interest, to execute the entire Agency Order at the proposed price, the Agency Order will be executed against the BOX Book.[11] If there is not sufficient size available on the BOX Book, including non-public customer interest, to execute the entire Agency Order at the proposed price, the Agency Order and the Solicited Order will be cancelled and no executions will occur.[12]

BOX's Solicitation Auction proposal includes a ''Surrender Quantity'' function for Solicitation Auctions. An OFP may use this function when starting a Solicitation Auction by designating, for the Solicited Order, the quantity of contracts of the Agency Order for which the OFP is willing to ''surrender'' to the BOX Book (''Surrender Quantity''). In effect, the Surrender Quantity reduces the size of the Solicited Order in order to permit (a) Book Priority Public Customer Orders on the BOX Book at the proposed price or better, and/or (b) any bids (offers) on the BOX Book at any price better than the proposed execution price, to execute against the Agency Order.[13] The surrender of contracts to the interest described in (a) and (b) of the prior sentence permits the Solicited Order to execute against the balance of contracts remaining in the Agency Order when otherwise the Solicited Order would not participate in the transaction at all or the Agency Order and Solicited Order both would be cancelled.

The following examples describe how a Solicitation Auction could be impacted by the presence of a Surrender Quantity:

• When a Book Priority Public Customer Order(s) is resting on the BOX Book at a price equal to or better than the proposed price, and, when aggregating all other interest on the BOX Book (*i.e.* including non-public customer interest but not including Responses), there is sufficient size to execute against the Agency Order at least at the proposed price, the Agency Order is executed against the BOX Book and the Solicited Order is cancelled.[14] However, if the OFP has designated a Surrender Quantity, and the aggregate size of Book Priority Public Customer Orders, and other interest on the BOX Book at prices better than the proposed price, is equal to or less than the Surrender Quantity—*i.e.,* such interest represents no more than the maximum quantity that the OFP is willing to surrender—the Agency Order will first execute against all such Book Priority Public Customer Orders and all other interest on the BOX Book at a better price,[15] and then against the Solicited Order.

• When a Book Priority Public Customer Order(s) is resting on the BOX Book at a price equal to or better than the proposed execution price but there is otherwise insufficient quantity on the BOX Book to execute the entire Agency Order the Solicited Order is not permitted to bypass the Book Priority Public Customer(s) on the BOX Book, and both the Solicited Order and the Agency Order are cancelled.[16] With the Surrender Quantity, however, the Book Priority Public Customer Order(s) will be executed first (assuming that it is not larger than the Surrender Quantity) and the remainder of the Agency Order will be executed against the Solicited Order.

• When the proposed execution price is inferior to the best bid or offer on the BOX Book, the Solicited Order is not permitted to trade through the better-priced order(s) on the BOX Book, and both the Solicited Order and the Agency Order are cancelled.[17] With the Surrender Quantity, however, the better priced order(s) on the BOX Book will be executed first (assuming that the size of such order(s) is not larger than the Surrender Quantity) and the remainder of the Agency Order will be executed against the Solicited Order.

The proposed rule change also will require OFPs to deliver to customers a written notification (in a form approved by the Exchange) describing the terms and conditions of the Solicitation Auction before executing Agency Orders using the Solicitation Auction.

Proposed Supplementary Material to Section 31 states that it will be a violation of an Options Participant's duty of best execution if it were to cancel a Facilitation Order to avoid execution of the order at a better price. Also, Options Participants will be prohibited from using the Solicitation Auction to circumvent chapter V, section 17, which limits principal transactions.[18] Such prohibited actions may include, but are not limited to, Options Participants entering Solicitation Orders that are solicited from (i) Affiliated broker-dealers, or (ii) broker-dealers with which the Options Participant has an arrangement that allows the Options Participant to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal. Any Solicited Orders entered by Options Participants to trade against Agency Orders may not be for the account of a BOX market maker that is assigned to the options class.

In addition, the Supplementary Material provides that the proposed rule change will allow orders and Responses to be entered into the BOX Facilitation and Solicitation Auctions and receive executions at penny increments. Finally, the proposed rule change adds references to the Facilitation and Solicitation Auction mechanisms to Chapter V, Section 17 (Customer Orders and Order Flow Providers), and to Chapter III, Section 4(f) (Prevention of the Misuse of Material Nonpublic Information).

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to

[11] *Id.*

[12] *See* chapter V, section 31(b)(ii)(1) of the BOX Rules.

[13] *See* chapter V, section 31(b)(ii)(4) of the BOX Rules.

[14] *See supra* notes 10–11 and accompanying text.

[15] Public Customer bids (offers) on the BOX Book at the time of Surrender Quantity execution that are priced higher (lower) than the proposed execution price will be executed at the proposed execution price. Non-Public Customer and Market Maker bids (offers) on the BOX Book at the time of Surrender Quantity execution that are priced higher (lower) than the proposed execution price will be executed at their stated price, *See* Chapter V, Section 31(b)(ii)(4)(b) of the BOX Rules. The Surrender Quantity does not need to accommodate non-Public Customer interest at the proposed price, which would not, in itself, block a transaction with the Solicited Order. The Surrender Quantity also does not need to accommodate Responses even at a better price. (Responses at a better price are aggregated only to determine if the entire Agency Order can be executed at a better price.)

[16] *See supra* note 12.

[17] *See supra* note 9.

[18] As amended by the proposed rule change, Chapter V, Section 17, among other things, contains provisions that (a) Prohibit an Options Participant from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest; (b) provide that it will be a violation of the BOX Rules for an Options Participant to cause the execution of an order it represents as agent on BOX through the use of orders it solicited from Options Participants and/or non-Participant broker-dealers to transact with such orders, whether such solicited orders are entered into the BOX market directly by the Options Participant or by the solicited party (either directly or through another Participant), unless (i) The agency order is first exposed to the BOX Book for at least one (1) Second, (ii) the Options Participant utilizes the Solicitation Auction, or (iii) the Options Participant utilizes the Price Improvement Period; and (c) provides that the agency order be first exposed to the BOX Book for at least one (1) second, (ii) the OFP has been bidding or offering on BOX for a least one (1) Second prior to receiving an agency order that is executable against such bid or offer, (iii) the OFP sends the agency order to the Price Improvement Period or Universal Price Improvement Period, or (iv) the Options Participant utilizes the Solicitation Auction.

a national securities exchange.[19] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act,[20] in general, and Section 6(b)(5) of the Act,[21] in particular, which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange's proposed Facilitation Auction is substantially similar to the facilitation mechanism currently operative at the International Securities Exchange, Inc. (''ISE''), which the Commission has found consistent with the Act.[22] The Commission notes, however, that, on BOX, should any portion of Agency Order remain available for execution against Non-Public Customer and Market Maker bids (offers), such Non-Public Customer and Market Maker bids (offers) will be executed against the Agency Order on a price-time priority basis, instead of on a pro-rata priority basis, as is done on ISE. The use of price-time priority on BOX is consistent with the priority rules of BOX's trading system, whereas the use of pro-rata priority on ISE is consistent with the principles generally of that exchange. The Commission believes that this functionality is consistent with the Act.

The proposed Solicitation Auction on BOX also is modeled on similar mechanisms on other exchanges. The Commission previously has found such mechanisms consistent with the Act,[23] stating that they should allow for greater flexibility in pricing large-sized orders and may provide a greater opportunity for price improvement.[24] BOX has made certain modifications to its solicitation auction, in part to reflect its price-time priority system, and the Commission believes that these changes are also consistent with the Act.

The first modification relates to the interaction between Public Customer Orders and the Solicitation Auction. Specifically, in BOX's proposed Solicitation Auction, a Public Customer Order resting on the BOX Book within the depth that would have traded with the Agency Order had the Solicitation Auction not been in place (*i.e.,* a Book Priority Public Customer Order) would prevent the Solicited Order from executing against the Agency Order, while a Public Customer Order resting on the BOX Book below a depth that would be traded with the Agency Order had the Solicitation Auction not been in place (*i.e.,* a public customer order that is not a Book Priority Public Customer Order) would not prevent such execution. Similar to ISE's solicitation mechanism, BOX's Solicitation Auction will not permit Public Customer orders to be bypassed, but, unlike ISE's mechanism, BOX's Solicitation Auction will only preclude the bypassing of Public Customers orders to the extent that such orders would have been entitled to participate in the execution of the Agency Order had the Agency Order been sent to the BOX Book.[25]

The differential treatment of Public Customers orders that are not Book Priority Public Customer Orders and Book Priority Public Customer Orders is consistent with the price-time priority structure of the BOX market.[26] In particular, Public Customer orders that are not Book Priority Public Customer Orders would not have been executed against the Agency Order had it been sent to the BOX Book. Thus, the Commission believes that it is reasonable for BOX and consistent with the Act not to provide for the execution of such orders against the Agency Order and not to allow such orders to prevent the execution of a Solicited Order with an Agency Order.

The second modification relates to how Responses are aggregated with orders on the BOX Book. Specifically, the ISE's solicitation mechanism always aggregates Responses with orders when determining whether sufficient size exists to execute the entire Agency Order. BOX, however, aggregates Responses with orders only if such Responses are at an improved price over the price proposed for the transaction. Responses are not aggregated with orders on the BOX Book when determining whether sufficient size exists to execute the entire Agency Order at the proposed solicitation price.[27]

Regarding the differential treatment of Responses in these two scenarios, the Commission notes that the solicitation mechanisms on other exchanges, on which BOX's proposed Solicitation Auction generally is modeled, assure that when sufficient interest can be attracted through the exposure of an agency order to obtain a price better than the proposed execution price for the entire agency order, the agency order should receive that price improvement.[28] On the other hand, in the case where price improvement is not elicited for the entire agency order, such solicitation mechanisms provide for the execution to the solicited order against the agency order, even when non-public customer interest (including responses) in the aggregate would provide enough size to fill the entire agency order.[29] It is only the presence of a public customer order at the proposed price that prevents the execution of the solicited order against the agency order, so as not to bypass that public customer.

Responses exist only as a result of a solicitation auction and only for the possibility of eliciting a better price for an agency order in its entirety. Responses were not designed to elicit interest to fill the agency order at the same price as that proposed by the solicited order. In particular, a distinctive feature of solicitation mechanisms is that the solicited order is executed against the agency order even when non-public customer orders could fill the agency order at the proposed price, so long as those orders do not improve the price for the entire size of the agency order. On BOX, Public Customer orders generally are not granted any more deference than other orders on the BOX Book. Nonetheless, in its Solicitation Auction, consistent with the operation of solicitation mechanisms at other exchanges, BOX will not permit a Solicited Order to trade against the Agency Order when it would bypass a Public Customer Order

[19] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (concerning registration of the ISE, and, among other features of the exchange, the ISE's facilitation mechanism).

[23] *See id.,* and *see* Securities Exchange Act Release Nos. 49141 (January 28, 2004), 69 FR 5625 (February 5, 2004) (SR–ISE–2001–22) (approval of ISE Solicited Order Mechanism) and 57610 (April 3, 2008), 73 FR 19535 (April 10, 2008) (SR–CBOE–2008–14) (approval of CBOE Solicitation Auction Mechanism).

[24] *See* Securities Exchange Act Release No. 57610 (April 3, 2008), 73 FR 19535 (April 10, 2008) (File No. SR–CBOE–2008–14).

[25] *See* Notice, *supra* note 3, at note 8.

[26] The consistency with the Act of a price-time priority system that gives Public Customers no priority in trading rights is discussed, in the context of BOX, in Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15) (Order Establishing Trading Rules for the Boston Options Exchange facility).

[27] *See supra* note 10.

[28] *See supra* note 23.

[29] For a more complete discussion of the rationale for these aspects of the Solicited Order Mechanism, *see generally* Securities Exchange Act Release Nos. 49141 (January 28, 2004), 69 FR 5625 (February 5, 2004) (SR–ISE–2001–22) (Notice); and 49943 (June 30, 2004), 69 FR 41317 (July 8, 2004) (SR–ISE–2001–22) (Approval Order).

at the same price, so long as that order was on the Book within the depth of interest that would have traded with the Agency Order had the Agency Order been submitted unmatched. If other interest on the Book can fill the balance of the Agency Order, BOX further will permit the Public Customer Order, together with such other interest, to fill the Agency Order. The Commission believes that it is reasonable and consistent with the Act for BOX to not aggregate Responses in this case because the sole purpose in eliciting Responses in the Solicitation Auction is to explore whether any possibility exists to obtain price improvement for the entire Agency Order.

Regarding BOX's introduction of the Surrender Quantity, the Commission believes that this function could help facilitate the execution of block-sized orders, while avoiding trade-throughs of better priced bids (offers) on the BOX Book and not bypassing Public Customer orders that would have traded with the Agency Order if the Agency Order had been submitted to the BOX Book.

The Exchange has adopted an interpretive provision to make clear that it would be a violation of an Options Participant's duty of best execution to its customer if it were to cancel a facilitation order to avoid execution of the order at the better price. Use of the Facilitation Auction does not modify an Options Participant's best execution duty to obtain the best price for its customer. Accordingly, while Facilitation Orders may be canceled during the facilitation timeframe, if an Options Participant was to cancel a facilitation order when there was a superior price available on the Exchange and subsequently re-enter the facilitation order at the same facilitation price after the better price was no longer available without attempting to obtain that better price for its customer, there would be a presumption that the member did so to avoid execution of its customer order by other market participants.

The Commission believes that this interpretation is important to ensure that brokers proposing to facilitate orders as principal fulfill their best execution duties to their customers. In the Commission's view, withdrawing a facilitated order that may be price improved simply to avoid execution of the order at the superior price is a violation of a broker's duty of best execution.[30] The Commission expects the Exchange to establish procedures to surveil for violations of this best execution obligation.[31]

Finally, the Commission believes that it is reasonable and consistent with the Act for orders and Responses to be entered into the Exchange's Facilitation and Solicitation Auctions and receive executions at penny increments (the ''Penny Increment functionality''). The Commission notes that the Exchange is not restricting the ability of any Options Participant to enter orders and Reponses in penny increments into the Exchange's Facilitation and Solicitation Auctions on its own behalf or on behalf of any other person, including customers. The Commission believes that the Penny Increment functionality could provide greater flexibility in pricing for block-size orders and could provide enhanced opportunities for block-sized orders to benefit from price improvement, while ensuring broad access to persons that would like to participate in a one-cent increment. In addition, the Commission notes that it has previously approved rules relating to exchange crossing mechanisms that allow orders and executions in penny increments.[32]

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–BX–2011–034) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25073 Filed 9–28–11; 8:45 am]

BILLING CODE 8011–01–P

[30] *See, e.g.,* Securities Exchange Act Release No. 49175 (February 3, 2004), 69 FR 6124 (February 9, 2004) (Commission concept release on ''Competitive Developments in the Options Markets''), citing In the Matter of the Application of the International Securities Exchange, LLC For Registration as a National Securities Exchange, Release No. 42455 (Feb. 24, 2000).

[31] The Commission realizes that ensuring that Options Participations do not re-enter facilitated orders on markets other than the Exchange may be difficult. Nevertheless, the Commission expects the Exchange to work with the other options markets through the Intermarket Surveillance Group to develop methods and procedures to monitor their Options Participants trading on other markets for possible best execution violations in this context.

[32] See Securities Exchange Act Release Nos. 49068 (January 14, 2003), 68 FR 3062 (January 22, 2003) (Commission approval establishing trading rules for BOX, including rules for the Price Improvement Period); 49323 (February 26, 2004), 69 FR 10087 (March 3, 2004) (Commission approval establishing rules for ISE's Price Improvement Mechanism); and 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (Commission approval establishing rules for CBOE's Automated Improvement Mechanism). These mechanisms allow for the execution of orders at penny increments even when the standard minimum trading increment is greater than one penny.

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65386; File No. SR–OCC–2011–10]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Revise Its By-Laws and Rules To Establish a Clearing Fund Amount Intended To Support Losses Under a Defined Set of Default Scenarios

September 23, 2011.

I. Introduction

On August 3, 2011, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2011–10 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on August 17, 2011.[3] The Commission received no comment letters. This order approves the proposed rule change.[4]

II. Description of the Proposal

This proposed rule change would revise OCC's By-Laws and Rules to establish the size of OCC's clearing fund as the amount that is required within a confidence level selected by OCC to sustain the possible loss under a defined

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–65119 (August 12, 2011), 76 FR 51087 (August 17, 2011).

[4] This proposed rule change replaced a previously filed and later withdrawn proposed rule change by OCC regarding clearing fund sizing. File No. SR–OCC–2010–04, Securities Exchange Act Release 34–62371 (June 24, 2010), 75 FR 37864 (June 30, 2010) (Notice of Filing of Proposed Rule Change To Revise its By-Laws and Rules To Establish a Clearing Fund Amount Intended to Support Losses Under a Defined Set of Default Scenarios). OCC withdrew its earlier proposed rule change in order that it could: incorporate amendments that had been proposed for the previous proposed rule change; discuss the adaptation of the methodology underlying the formula to take into account the effects of implementing its ''Collateral in Margins'' rule change (Securities Exchange Act Release No. 34–58158 (July 15, 2008), 73 FR 42646 (July 22, 2008) (SR–OCC–2007–20)); give itself time to prepare updated comparative data about the impact of the proposed clearing fund sizing formula; and make additional changes to improve the overall readability of the proposed rule text.

set of scenarios as determined by OCC. Currently the size of the clearing fund is calculated each month and is equal to a fixed percentage of the average total daily margin requirement for the preceding month provided that this calculation results in a clearing fund of $1 billion or more.[5]

Under the revised formula for determining the size of the clearing fund, the amount of the fund will be equal to the larger of the amount of the charge to the fund that would result from (i) a default by the single ''clearing member group'' [6] whose default would be likely to result in the largest draw against the clearing fund or (ii) an event involving the near-simultaneous default of two randomly selected ''clearing member groups'' in each case as calculated by OCC with a confidence level selected by OCC. Initially, the confidence levels employed by OCC in calculating the charge likely to result from a default by OCC's largest ''clearing member group'' and the default of two randomly-selected ''clearing member groups'' will be 99% and 99.9%, respectively. However, OCC will have the discretion to employ different confidence levels in these calculations in the future provided that OCC will not employ confidence levels of less than 99% without filing a rule change with the Commission.[7] The size of the clearing fund will continue to be recalculated monthly based on a monthly averaging of daily calculations for the previous month and subject to a requirement that the total clearing fund be not less than $1 billion.[8]

The new formula is designed to more directly take into account anticipated losses resulting from the clearing member default scenarios described above and thereby establish the clearing fund at a size that is sufficient to cover such losses without relying on any rights of OCC to require clearing members to replenish the clearing fund. OCC believes the formula is generally consistent with the current ''Recommendations for Central Counterparties'' published by the Bank for International Settlements and the International Organization of Securities Commissioners. Among the recommendations in the publication are that a clearing organization ''maintain sufficient financial resources to withstand, at a minimum, a default by the clearing member to which it has the largest exposure in extreme but plausible market conditions.'' The publication further advises clearing organizations to plan for the possibility of a default by two or more clearing members in a short time frame.[9]

In considering whether to revise the current formula for determining the size of the clearing fund, OCC compared the size of the clearing fund that would have resulted from application of the revised formula to the actual size of the clearing fund for each month from February 2008 through September 2009. This analysis revealed that for this time period the size of the clearing fund under the revised formula would have been on average 10% larger than under the current formula. In September and October 2008, which were two months of extreme volatility in the U.S. securities markets, the revised formula would have resulted in a clearing fund size of approximately 31% and 27% greater than under the current formula. The average monthly change in the size of the clearing fund and the standard deviation of clearing fund size from month-to-month for this time period under the two formulas were broadly similar.[10]

Since deciding in September 2009 that it wished to adopt the revised formula, OCC has continued to compare the size of the clearing fund under the revised formula with the size under the current formula. During 2010 the methodology underlying the revised formula was adapted to incorporate the effects of the implementation of the changes described in its Collateral in Margins rule change.[11] Under those changes, certain types of securities accepted as collateral are analyzed for margin purposes together with positions in cleared products as a single portfolio to afford a more accurate measurement of risk. During the period February 2008 through January 2010 (*i.e.,* prior to the implementation of the Collateral in Margins Filing) for which comparative data is available, the size of the clearing fund under the revised formula would have been on average 3% larger than under the current formula. Including also the months of July 2010 through June 2011 (*i.e.,* since the implementation of the Collateral in Margins rule change) for which comparative data is available, the corresponding percentage increase is 2%.

The existing formula for determining the size of the clearing fund was intended to establish the fund at a level reasonably designed to cover losses resulting from one or more clearing member defaults, and OCC believes that it has served that purpose adequately. Nevertheless, OCC believes that the revised formula presents a more accurate prediction of the actual losses that would be likely to result from such defaults. The existing formula takes potential losses into account only indirectly by setting the size of the clearing fund as a percentage of average margin requirements. The revised formula will directly take into account various types of default scenarios and therefore in OCC's view will be more likely to result in a level for the clearing fund that is adequate in the event such scenarios occur. The new formula is designed to more closely align the size of the clearing fund with its intended purpose of protecting OCC from any losses that could result from clearing member defaults and should thereby better help avoid a disruption of the clearance process even during extreme market conditions.

Article VIII, Section 6 of OCC's By-Laws, which obligates clearing members to make good deficiencies in their clearing fund deposits resulting from pro rata charges or otherwise will remain unchanged.[12]

[5] If the calculation does not result in a clearing fund of $1 billion or more, the percentage of the average total daily margin requirement for the preceding month that results in a fund level of at least $1 billion is applied provided that in no event will the percentage exceed 7%.

[6] ''Clearing member group'' will be defined in Article I (''Definitions'') of OCC's By-Laws to mean ''a Clearing Member and any Member Affiliates of such Clearing Member.''

[7] Proposed Interpretation and Policy .02 to OCC Rule 1001.

[8] Proposed Interpretation and Policy .01 to OCC Rule 1001.

[9] Bank for International Settlements and International Organization of Securities Commissions, Recommendations for Central Counterparties (November 2004), *available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD176.pdf* (''2004 Recommendations''). OCC notes that in December 2009 the Committee on Payment and Settlement Systems of the Bank for International Settlements (''CPSS'') and the Technical Committee of the International Organization of Securities Commissions (''IOSCO'') began a comprehensive review of the 2004 Recommendations in order to strengthen and clarify such recommendations based on experience and lessons learned from the recent financial crisis. In March 2011, CPSS and IOSCO published for comment the results of its review with comments requested by July 29, 2011. Bank for International Settlements and International Organization of Securities Commissions, Principles for financial market infrastructures (March 2011), available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD350.pdf*

[10] Note the comparative data described in this paragraph was obtained using confidence levels set at 99% and higher. OCC estimates that using only a 99% confidence level for the months referenced would have lowered by an average of approximately ½% the total size of the clearing fund as determined by the proposed methodology.

[11] Securities Exchange Act Release No. 34–58158 (July 15, 2008), 73 FR 42646 (July 22, 2008) (SR–OCC–2007–20). *Supra* note 4.

[12] OCC's members' obligation to make good deficiencies in their clearing fund deposits will continue to be subject to a cap equal to 100% of a clearing member's then required deposit if it

Continued

III. Discussion

Section 17A(b)(3)(F) of the Act [13] requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that because the proposed rule change creates a more direct correlation between OCC's clearing fund size and potential losses from a defined set of default scenarios, it should better enable OCC to fulfill this statutory obligation.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [14] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (File No. SR–OCC–2011–10) be, and hereby is, approved.[16]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

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BILLING CODE 8011–01–P

promptly withdraws from membership and closes out or transfers its open positions.

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 15 U.S.C. 78q–1.

[15] 15 U.S.C. 78s(b)(2).

[16] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65384; File No. SR–ISE–2011–59]

Self-Regulatory Organizations; International Securities Exchange, Incorporated; Notice of Proposed Rule To Simplify the $1 Strike Price Interval Program

September 22, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 21, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules in order to simplify the $1 Strike Price Interval Program. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Supplementary Material .01 to ISE Rule 504 in order to simplify the $1 Strike Price Interval Program (''Program''). This filing is based on a filing previously submitted by the Chicago Board Options Exchange, Inc. (''CBOE'').[3]

In 2003, the Commission issued an order permitting the Exchange to establish the Program on a pilot basis.[4] At that time, the underlying stock had to close at $20 on the previous trading day in order to qualify for the Program. The range of available $1 strike price intervals was limited to a range between $3 and $20 and no strike price was permitted that was greater than $5 from the underlying stock's closing price on the previous trading day. Series in $1 strike price intervals were not permitted within $0.50 an existing strike. In addition, the Exchange was limited to selecting five (5) classes and reciprocal listing was permitted. Furthermore, LEAPS in $1 strike price intervals were not permitted for classes selected to participate in the Program.

The Exchange renewed the pilot program on a yearly basis and in 2008, the Commission granted permanent approval of the Program.[5] At that time, the Program was expanded to increase the upper limit of the permissible strike price range from $20 to $50. In addition, the number of class selections per exchange was increased from five (5) to ten (10). Since the Program was made permanent, the number of class selections per exchange has been increased from ten (10) classes to 55 classes [6] and subsequently increased from 55 classes to 150 classes.[7]

Amendments To Simplify Non-LEAPS Rule Text

The most recent expansion of the Program was approved by the Commission in early 2011 and increased the number of $1 strike price intervals permitted within the $1 to $50 range.[8] This expansion was a proposal of another exchange and ISE submitted its filing for competitive reasons. This expansion, however, has resulted in very lengthy rule text that is complicated and difficult to understand. ISE believes that the proposed changes to simplify the rule text of the Program will benefit market participants since the Program will be easier to understand and will maintain the expansions made to the Program in early 2011. Through the current proposal, the Exchange also hopes to make administration of the Program easier, *e.g.,* system programming efforts. To simply the rules of the Program and, as a proactive attempt to mitigate any unintentional listing of improper strikes, ISE is proposing the following streamlining amendments:

- When the price of the underlying stock is equal to or less than $20, permit $1 strike price intervals with an exercise price up to 100% above and 100%

[3] *See* Securities Exchange Act Release No. 65031 (August 4, 2011) 76 FR 48935 (August 9, 2011) (SR–CBOE–2011–040).

[4] *See* Securities Exchange Act Release No. 48033 (June 16, 2003) 68 FR 37036 (June 20, 2003) (SR–ISE–2003–17).

[5] *See* Securities Exchange Act Release No. 57169 (January 18, 2008) 73 FR 4654 (January 25, 2008) (SR–ISE–2007–110).

[6] *See* Securities Exchange Act Release No. 59587 (March 17, 2009), 74 FR 12414 (March 24, 2009) (SR–ISE–2009–04).

[7] *See* Securities Exchange Act Release No. 62442 (July 2, 2010), 75 FR 39597 (July 9, 2010) (SR–ISE–2010–64).

[8] *See* Securities Exchange Act Release No. 63771 (January 25, 2011), 76 FR 5642 (February 1, 2011) (SR–ISE–2011–06).

below the price of the underlying stock.[9]

○ However, the above restriction would not prohibit the listing of at least five (5) strike prices above and below the price of the underlying stock per expiration month in an option class.[10]

○ For example, if the price of the underlying stock is $2, the Exchange would be permitted to list the following series: $1, $2, $3, $4, $5, $6 and $7.[11]

• When the price of the underlying stock is greater than $20, permit $1 strike price intervals with an exercise price up to 50% above and 50% below the price of the underlying security up to $50.[12]

• For the purpose of adding strikes under the Program, the ''price of the underlying stock'' shall be measured in the same way as ''the price of the underlying security'' is as set forth in Rule 504(A)(b)(i).[13]

• Prohibit the listing of additional series in $1 strike price intervals if the underlying stock closes at or above $50 in its primary market and provide that additional series in $1 strike price intervals may not be added until the underlying stock closes again below $50.[14]

Amendments To Simplify LEAPS Rule Text

The early 2011 expansion of the Program permitted for some limited listing of LEAPS in $1 strike price intervals for classes that participate in the Program. The Exchange is proposing to maintain the expansion as to LEAPS, but simplify the language and provide examples of the simplified rule text. These changes are set forth subparagraph (v) to Supplementary Material .01(b).

For stocks in the Program, the Exchange may list one $1 strike price interval between each standard $5 strike interval, with the $1 strike price interval being $2 above the standard strike for each interval above the price of the underlying stock, and $2 below the standard strike for each interval below the price of the underlying stock (''$2 wings''). For example, if the price of the underlying stock is $24.50, the Exchange may list the following standard strikes in $5 intervals: $15, $20, $25, $30 and $35. Between these standard $5 strikes, the Exchange may list the following $2 wings: $18, $27 and $32.[15]

In addition, the Exchange may list the $1 strike price interval which is $2 above the standard strike just below the underlying price at the time of listing. In the above example, since the standard strike just below the underlying price ($24.50) is $20, the Exchange may list a $22 strike. The Exchange may add additional long-term options series strikes as the price of the underlying stock moves, consistent with the OLPP.

Non-Substantive Amendments to Rule Text

The early 2011 expansion of the Program prohibited the listing of $2.50 strike price intervals for classes that participate in the Program. This prohibition applies to non-LEAP and LEAPS. The Exchange proposes to maintain this prohibition and codify it in Supplementary Material .01(a) (Program Description).

For ease of reference, the Exchange is proposing to add the headings ''Program Description,'' ''Initial and Additional Series'' and ''LEAPS'' to Supplementary Material .01.

The Exchange is proposing to more accurately reflect the nature of the Program and is proposing to make stylistic changes throughout Supplementary Material .01 by adding the phrase ''price interval.'' Lastly, the Exchange is making technical changes to Supplementary Material .01, *e.g.,* replacing the word ''security'' with the word ''stock.''

The Exchange represents that it has the necessary systems capacity to support the increase in new options series that will result from the proposed streamlining changes to the Program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') [16] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [18] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change seeks to reduce investor confusion and to simplify the provisions of the $1 Strike Price Interval Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

[9] *See* proposed new subparagraph (i) to Supplementary Material .01(b).

[10] *Id.*

[11] *Id.*

[12] *See* proposed new subparagraph (ii) to Supplementary Material .01(b).

[13] *See* proposed new subparagraph (iii) to Supplementary Material .01(b). Rule 504A(b(i) provides, ''[t]he price of a security is measured by: (1) For intra-day add-on series and next-day series additions, the daily high and low of all prices reported by all national securities exchanges; (2) for new expiration months, the daily high and low of all prices reported by all national securities exchanges on the day the Exchange determines it preliminary notification of new series; and (3) for option series to be added as a result of pre-market trading, the most recent share price reported by all national securities exchanges between 8:45 a.m. and 9:30 a.m. (Eastern Time).''

[14] *See* proposed new subparagraph (iv) to Supplementary Material .01(b). The Exchange believes that it is important to codify this additional series criterion because there have been conflicting interpretations among the exchanges that have adopted similar programs. The $50 price criterion for additional series was intended when the Program was originally established (as a pilot) in 2003. *See* Securities Exchange Act Release No. 48033 (June 16, 2003) 68 FR 37036 (June 20, 2003) (SR–ISE–2003–17) (''ISE may list an additional expiration month provide that the underlying stock closes below $20 on its primary market on expiration Friday. If the underlying stock closes at or above $20 on expiration Friday, ISE will not list an additional month for a $1 strike series until the stock again closes below $20.'')

[15] The Exchange notes that a $2 wing is not permitted between the standard $20 and $25 strikes in the above example. This is because the $2 wings are added based on reference to the price of the underlying and as being between the standard strikes above and below the price of the underlying stock. Since the price of the underlying stock ($24.50) straddles the standard strikes of $20 and $25, no $2 wing is permitted between these standard strikes.

[16] 15 U.S.C. 78a *et seq.*

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[21] Therefore, the Commission designates the proposal operative upon filing.[22]

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–ISE–2011–59 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–59. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–ISE–2011–59 and should be submitted on or before October 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Elizabeth M. Murphy,

Secretary.

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[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day prefiling requirement.

[21] See Securities Exchange Act Release No. 65383 (September 22, 2011) (SR–CBOE–2011–040) (order approving proposed rule changes to simplify the $1 Strike Price Interval Program).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7514]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Global Undergraduate Exchange Program in Serbia and Montenegro

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/EUR–12–04.

Catalog of Federal Domestic Assistance Number: 19.009.

Key Dates: Application Deadline: November 24, 2011.

Executive Summary: The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the administration of the FY 2012 Global Undergraduate Exchange Program in Serbia and Montenegro (UGRAD). The total amount of funding for this award will be up to $1,537,575, pending the transfer of Assistance for Europe, Eurasia and Central Asia (AEECA) funds for obligation in FY 2012. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3) may submit proposals to administer the placement, monitoring, evaluation, follow-on, and alumni activities for the UGRAD program. Recruitment and selection of participants will be administered by a separate organization in conjunction with the U.S. Embassies in Serbia and Montenegro. Organizations with less than four years experience in conducting international exchange programs are not eligible for this competition.

The UGRAD Program provides outstanding students from Serbia and Montenegro with scholarships for one year of non-degree study at U.S. institutions of higher education. Scholarships are available in all fields of study. Funding should support a minimum of 50 participants, with approximately 35 students from Serbia and 15 students from Montenegro. Every effort should be made to maximize the number of scholarships awarded.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

The UGRAD Program is designed to promote mutual understanding among the people of Serbia and Montenegro

and the United States by awarding Serbian and Montenegrin undergraduate students full scholarships for one year of non-degree undergraduate study at accredited two- and four-year institutions of higher education in the United States. Students will enhance their academic education with community service participation and an internship. The academic component of the program begins in the fall semester of the year following the Agreement start date (academic year 2012–2013). At the end of their academic programs, students are required to immediately return to their home countries.

Applicant organizations must demonstrate the ability to administer the following aspects of the UGRAD Program—university placements, orientation, monitoring and support of FY 2012 participants including all logistics, financial management, evaluation, follow-on, and alumni. Recruitment and selection of participants is not a component of this RFGP. The cooperating organization will serve as the principal liaison with UGRAD Program host institutions and the Bureau. Further details on specific program responsibilities can be found in the Project Objectives, Goals, and Implementation (POGI) Statement, which is part of the formal solicitation package available from the Bureau. Interested organizations should read the entire **Federal Register** announcement for all information prior to preparing proposals.

The Bureau will award one Cooperative Agreement for this program. Should an applicant organization wish to work with other organizations in the implementation of this program, the Bureau requests that a sub-grant agreement be developed. The same requirements apply to the sub-grantee as to the recipient organization.

In a Cooperative Agreement, the Office of Academic Exchange Programs, European and Eurasian Branch (ECA/A/E/EUR) is substantially involved in program activities above and beyond routine grant monitoring. ECA/A/E/EUR activities and responsibilities for this program are as follows:

1. Participating in the design and direction of program activities;

2. Approval of key personnel;

3. Approval and input for all program agendas and timelines;

4. Providing guidance in execution of all project components;

5. Monitoring the target goal for number of participants and expenditure of funds toward meeting that goal;

6. Providing guidance on content and speakers for workshops;

7. Assisting with SEVIS-related issues;

8. Assisting with participant emergencies;

9. Providing background information related to participants' home countries and cultures;

10. Providing liaison with Public Affairs Sections of the U.S. Embassies and country desk officers at the State Department;

11. Providing Bureau evaluation mechanisms and instruments.

II. Award Information

Type of Award: Cooperative Agreement.

The Bureau's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2012.

Approximate Total Funding: $1,537,575. Funding will be provided from FY 2011/FY 2012 Assistance for Europe, Eurasia and Central Asia (AEECA) funds transferred to ECA for obligation in FY 2012.

Approximate Number of Awards: 1.

Ceiling of Award Range: $1,537,575.

Anticipated Award Date: Pending the transfer of funds, December 30, 2011.

Anticipated Project Completion Date: December 30, 2014.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is the Bureau's intent to renew this grant for two additional fiscal years, before openly competing it again. Subsequent awards may include the requirement to conduct a merit-based recruitment and selection component.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the cooperating organization must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, written records must be maintained to support all costs which are claimed as contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event that the minimum amount of cost sharing as stipulated in the approved budget is not provided, the Bureau's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. The Bureau anticipates awarding one grant, in an amount up to $1,537,575 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information To Request an Application Package:

Please contact Program Officer Karene Grad Steiner in the Office of Academic Exchange Programs, ECA/A/E/EUR, U.S. Department of State, SA–5, U.S. Department of State, 2200 C Street, NW., Washington, DC 20037, tel. (202) 632–3237, *e-mail: GradKE@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/EUR–12–04 when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Bureau Program Officer Karene Grad Steiner and refer to the

Funding Opportunity Number ECA/A/E/EUR–12–04 on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF—424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. All federal award recipients and sub-recipients must maintain current registrations in the Central Contractor Registration (CCR) database and have a Dun and Bradstreet Data Universal Numbering System (DUNS) number. Recipients and sub-recipients must maintain accurate and up-to-date information in the CCR until all program and financial activity and reporting have been completed. All entities must review and update the information at least annually after the initial registration and more frequently if required information changes or another award is granted.

You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, ''Return of Organization Exempt From Income Tax,'' must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its *USASpending.gov* Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

Office of Designation, Private Sector Programs Division, U.S. Department of State, ECA/EC/D/PS, SA–5, 5th Floor, 2200 C Street, NW., Washington, DC 20037, *Fax:* (202) 453–8640. Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and

be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—''Budget Information—Non-Construction Programs'' along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) Program Expenses.

(2) Domestic Administration.

(3) Overseas Administration.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: 11/24/2011.

Reference Number: ECA/A/E/EUR–12–04.

Methods of Submission: Electronic and Hard Copy.

Applications may be submitted in one of two ways:

(1.) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*), or

(2.) electronically through *http://www.grants.gov*.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at the Bureau more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. The Bureau will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to the Bureau via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and eight copies of the application should be sent to:

Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/A/E/EUR–12–04, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20037.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a CD–ROM. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassies for their review.

IV.3f.2—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through *Grants.gov* (*http://www.grants.gov*). Complete solicitation

packages are available at *Grants.gov* in the ''Find'' portion of the system.

Please Note: The Bureau bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via *Grants.gov*.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with *Grants.gov*.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via *Grants.gov* can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The *Grants.gov* Web site includes extensive information on all phases/aspects of the *Grants.gov* process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. The Bureau strongly recommends that all potential applicants review thoroughly the *Grants.gov* Web site, well in advance of submitting a proposal through the *Grants.gov* system. The Bureau bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding *Grants.gov* registration and submission to:

Grants.gov Customer Support. Contact Center Phone: 800–518–4726. Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time. *E-mail: support@grants.gov*.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the *Grants.gov* site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the *Grants.gov* Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from *grants.gov* upon the successful submission of an application. Again, validation of an electronic submission via *Grants.gov* can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. The Bureau will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the *Grants.gov* web portal to ensure that proposals have been received by *Grants.gov* in their entirety, and the Bureau bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreement awards resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea and program planning:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (program venues and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. *Institutional Record and Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards (grants or cooperative agreements) as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. *Follow-on Activities and Evaluation:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events. Proposals also should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

7. *Cost-sharing and cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant

proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the Bureau program office coordinating this competition.

VI.2 Administrative and National Policy Requirements: Terms and Conditions for the Administration of Bureau agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://fa.statebuy.state.gov*.

VI.3. Reporting Requirements: You must provide the Bureau with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's *USAspending.gov* Web site—as part of the Bureau's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, ''Performance Progress Report'' Cover Sheet with all program reports.

(4) Quarterly program and financial reports which should include summaries of program activity and lessons learned.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information).

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the Bureau Grants Officer and the Bureau Program Officer listed in the final assistance award document.

Program Data Requirements: Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information, biographic sketch, and U.S. host institution of higher education of all persons who travel internationally on funds provided by the agreement or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the Bureau Program Officer at least two week days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, *contact:* Program Officer Karene Grad Steiner, Office of Academic Exchange Programs, ECA/A/E/EUR, Reference Number: ECA/A/E/EUR–12–04, U.S. Department of State, 2200 C Street, NW., Washington, DC 20037, (202) 632–3237, *e-mail: GradKE@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the title and number ECA/A/E/EUR–12–04. Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: September 20, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2011–24988 Filed 9–28–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7603]

Notice of Public Meeting

Summary: The U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs (OES), Office of Marine Conservation announces that the Advisory Panel to the U.S. Section of the North Pacific Anadromous Fish Commission will meet on October 6, 2011.

Dates: The meeting will take place via teleconference on October 6th, 2011, from 2 p.m. to 4 p.m. Eastern time.

Meeting Details: The teleconference call-in number is toll-free 1–888–989–7597, passcode 21898, and will have a limited number of lines for members of the public to access from anywhere in the United States. Callers will hear instructions for using the passcode and joining the call after dialing the toll-free number noted. Members of the public wishing to participate in the teleconference must contact the OES officer in charge as noted in the **FOR FURTHER INFORMATION CONTACT** section below no later than close of business on Tuesday, October 4th, 2011.

For Further Information Contact: John Field, Office of Marine Conservation, OES, Room 2758, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. Telephone (202) 647–3263, fax (202) 736–7350, e-mail *fieldjd@state.gov*.

Supplementary Information: In accordance with the requirements of the Federal Advisory Committee Act, notice is given that the Advisory Panel to the U.S. Section of the North Pacific Anadromous Fish Commission (NPAFC) will meet on the date and time noted above.

The panel consists of members from the states of Alaska and Washington who represent the broad range fishing and conservation interests in anadromous and ecologically related species in the North Pacific. Certain members also represent relevant state and regional authorities. The panel was established in 1992 to advise the U.S. Section of the NPAFC on research needs and priorities for anadromous species, such as salmon, and ecologically related species occurring in the high seas of the North Pacific Ocean. The upcoming Panel meeting will focus on two major topics: (1) Review of the agenda for the 2011 annual meeting of the NPAFC (October 24–28; Nanaimo, British Columbia, Canada); and (2) logistics for the U.S. Section at the NPAFC meeting. Background material is available from the point of contact noted above and by visiting *http://www.npafc.org.*

This announcement will appear in the **Federal Register** less than 15 days prior to the meeting.

The Department of State finds that there is an exceptional circumstance in that this advisory committee meeting must be held on October 6th in order to adequately prepare for the NPAFC to be convened in Canada beginning October 24th, including the logistics involved in attending the meeting.

Dated: September 23, 2011.

John Field,

Acting Director, Office of Marine Conservation, Department of State.

[FR Doc. 2011–25113 Filed 9–28–11; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Trade Advisory Committee on Small and Minority Business (ITAC–11)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of an opened meeting.

SUMMARY: The Industry Trade Advisory Committee on Small and Minority Business (ITAC–11) will hold a meeting on Wednesday, October 12, 2011, from 9 a.m. to 4 p.m. The meeting will be opened to the public from 2:30 p.m. to 4 p.m.

DATES: The meeting is scheduled for October 12, 2011, unless otherwise notified.

ADDRESSES: The meeting will be held at the Ronald Reagan International Trade Center, Training Room A, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Laura Hellstern, DFO for ITAC–11 at (202) 482–3222, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The Agenda topics to be discussed are:

—Small Business Export Finance Update.
—Trans-Atlantic Business Dialogue Activities.
—U.S. Commercial Service National Export Initiatives (NEI) Update.

Carlos H. Romero,

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Engagement.

[FR Doc. 2011–25031 Filed 9–28–11; 8:45 am]

BILLING CODE 3190–W1–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–42]

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 petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before October 11, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–1032 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: Keira Jones (202) 267–4024, Tyneka Thomas (202) 267–7626, or David Staples (202) 267–4058, 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 September 23, 2011.

Julie Ann Lynch,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2011–1032.

Petitioner: Flying Fireman, Inc.

Section of 14 CFR Affected: 14 CFR 91.313(a) and (e)

Description of Relief Sought: Flying Fireman, Inc. requests relief to allow the operation of a restricted category aircraft in air shows or special events that are over densely populated areas, in congested airways, or near busy airports where passenger transport operations are conducted.

[FR Doc. 2011–25067 Filed 9–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for the use of non-domestic 1/2'' × 0.008 steel fiber with ultimate tensile strength of 290ksi for experimental use in Ultra High Performance Concrete (UHPC) in the State of Iowa.

DATES: The effective date of the waiver is September 30, 2011.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via e-mail at *gerald.yakowenko@dot.gov.* For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, or via e-mail at *michael.harkins@dot.gov.* Office hours for the FHWA are from 8 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate to use non-domestic 1/2″ × 0.008 steel fiber with ultimate tensile strength of 290ksi for experimental use in UHPC in Iowa.

In accordance with Division A, section 123 of the ''Consolidated Appropriations Act, 2010'' (Pub. L. 111–117), the FHWA published a notice of intent to issue a waiver on its Web site for 1/2″ × 0.008 steel fiber with ultimate tensile strength of 290ksi for experimental use in UHPC in Iowa (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=62*) on August 23rd. The FHWA received seven comments in response to the publication. All seven commenters opposed the waiver request but did not provide information about domestic manufacturers. During the 15-day comment period, the FHWA conducted additional nationwide review to locate potential domestic manufacturers for 1/2″ × 0.008 steel fiber with ultimate tensile strength of 290ksi for experimental use in UHPC in Iowa. Based on all the information available to the agency, the FHWA concludes that there are no domestic manufacturers of 1/2″ × 0.008 steel fiber with ultimate tensile strength of 290ksi for experimental use in UHPC in Iowa.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the link provided to the Iowa waiver page noted above.

(Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410)

Issued on: September 20, 2011.

Victor M. Mendez,

Administrator.

[FR Doc. 2011–25004 Filed 9–28–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and United States Fish and Wildlife Service (USFWS), DOI.

SUMMARY: This notice announces actions taken by the FHWA and the USFWS that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project for a 26.7 mile segment of I–69, in the Counties of Greene and Monroe, State of Indiana and grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public that the FHWA and the USFWS have made decisions that are subject to 23 U.S.C. 139(l)(1) and are final within the meaning of that law. A claim seeking judicial review of those Federal agency decisions on the proposed highway project will be barred unless the claim is filed on or before March 27, 2012. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then the shorter time period applies.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Ms. Michelle Allen, Federal Highway Administration, Indiana Division, 575 North Pennsylvania Street, Room 254, Indianapolis, IN 46204–1576; *telephone:* (317) 226–7344; *e-mail: Michelle.Allen@dot.gov.* The FHWA Indiana Division Office's normal business hours are 7:30 a.m. to 4 p.m., E.T. For the USFWS: Mr. Scott Pruitt, Field Supervisor, Bloomington Field Office, USFWS, 620 South Walker Street, Bloomington, IN 47403–2121; *telephone:* 812–334–4261; *e-mail: Scott_Pruitt@fws.gov.* Normal business hours for the USFWS Bloomington Field Office are: 8 a.m. to 4:30 p.m., E.T. You may also contact Mr. Thomas Seeman, Project Manager, Indiana Department of Transportation (INDOT), 100 North Senate Avenue, Indianapolis, IN 46204; *telephone:* (317) 232–5336; *e-mail: TSeeman@indot.IN.gov.* Normal business hours for the Indiana Department of Transportation are: 8 a.m. to 4:30 p.m., E.T.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has approved a Tier 2 Final Environmental Impact Statement (FEIS) for section 4 of the I–69 highway project from Evansville to Indianapolis and issued a Record of Decision (ROD) for section 4 on September 8, 2011. Section 4 of the I–69 project extends from U.S. 231 (near Crane Naval Surface Warfare Center) to the intersection of Victor Pike Road and State Road 37 (south of Bloomington). Section 4 is a new alignment, fully access-controlled highway. As approved in the Tier 1 ROD, the corridor is generally 2,000 feet wide. The corridor width varies at three locations within Section 4. The corridor widens to approximately 5,400 feet along the Greene-Monroe County Line from just north of CR 1260E/CR 190S (Hobbieville Road) in Greene County to just north of Carter Road in Monroe County. The Section 4 corridor narrows to approximately 1,200 feet in width at two locations in Monroe County, near Evans Lane and also in the vicinity of Rockport Road and Lodge Road. The ROD selected Refined Preferred Alternative 2 for section 4, as described in the *I–69 Evansville to Indianapolis, Indiana, Tier 2 Final Environmental Impact Statement, Crane NSWC to Bloomington, Indiana* (FEIS), available at *http://www.i69indyevn.org/section4_FEIS.html.* The ROD also approved the locations of the

interchanges, grade separations, and access roads (which include new roads, road relocations, and realignments). The FHWA had previously issued a Tier 1 FEIS and ROD for the entire I–69 project from Evansville to Indianapolis, Indiana. A Notice of Limitation on Claims for Judicial Review of Actions by FHWA and United States Fish and Wildlife Service (USFWS), DOI, was published in the **Federal Register** on April 17, 2007. A claim seeking judicial review of the Tier 1 decisions must have been filed by October 15, 2007, to avoid being barred under 23 U.S.C. 139(l). Decisions in the FHWA Tier 1 ROD that were cited in that **Federal Register** notice included, but were not limited to, the following:

1. Purpose and need for the project.
2. Range of alternatives for analysis.
3. Selection of the Interstate highway build alternative and highway corridor for the project, as Alternative 3C.
4. Elimination of other alternatives from consideration in Tier 2 NEPA proceedings.
5. Process for completing the Tier 2 alternatives analysis and studies for the project, including the designation of six Tier 2 sections and a decision to prepare a separate environmental impact statement for each Tier 2 section.

The Tier 1 ROD and Notice specifically noted that the ultimate alignment of the highway within the corridor, and the location and number of interchanges and rest areas would be evaluated in the Tier 2 NEPA proceedings. Those proceedings for section 4 of the I–69 project from Evansville to Indianapolis have culminated in the September 8, 2011, ROD and this Notice. Interested parties may consult the Tier 2, section 4 ROD and FEIS for details about each of the decisions described above and for information on other issues decided. The Tier 2, section 4 ROD can be viewed and downloaded from the project Web site at *http://www.i69indyevn.org/.* People unable to access the Web site may contact FHWA or INDOT at the addresses listed above. Decisions in the section 4, Tier 2 ROD that have final approval include, but are not limited to, the following: 1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]. 2. Endangered Species Act [16 U.S.C. 1531–1544]. 3. Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]. 4. Clean Air Act, 42 U.S.C. 7401–7671(q). 5. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]. 6. Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]. 7. Bald and Golden Eagle Protection Act [16 U.S.C. 688–688d].

Previous actions taken by the USFWS for the Tier 1, I–69 project, pursuant to the Endangered Species Act, 16 U.S.C. 1531–1544, included its concurrence with the FHWA's determination that the I–69 project was not likely to adversely affect the eastern fanshell mussel (*Cyprogenia stegaria*) and that the project was likely to adversely affect, but not jeopardize, the bald eagle. The USFWS also concluded that the project was not likely to jeopardize the continued existence of the Indiana bat and was not likely to adversely modify the bat's designated Critical Habitat. These USFWS decisions were described in the Programmatic Biological Opinion issued on December 3, 2003, the Revised Programmatic Biological Opinion issued on August 24, 2006, and other documents in the Tier 1 project records. A Notice of Limitation on Claims for Judicial Review of these actions and decisions by the USFWS, DOI, was published in the **Federal Register** on April 17, 2007. The USFWS affirmed its decisions in the Amendment to the Revised Programmatic Biological Opinion issued on May 25, 2011. A Notice of Limitation on Claims for Judicial Review of these actions and decisions by the USFWS, DOI, was published in the **Federal Register** on July 20, 2011. A claim seeking judicial review of the Amendment to the Revised Programmatic Biological Opinion must be filed by January 17, 2012, to avoid being barred under 23 U.S.C. 139(l).

For the Tier 2, section 4, 26.7 mile I–69 project in Greene and Monroe Counties, an individual Biological Opinion was issued on July 6, 2011, that concluded that the section 4 project was not likely to jeopardize the continued existence of the Indiana bat and was not likely to adversely modify the bat's designated Critical Habitat. In addition, the USFWS issued an Incidental Take Statement subject to specified terms and conditions. The USFWS also issued a Bald Eagle Take Exempted Under ESA permit (No. MB218918–0) for the incidental take of the bald eagles for all sections of the I–69 project. The permit was effective as of June 25, 2009, and is subject to the terms and conditions of the Endangered Species Act section 7 incidental take statement and the August 24, 2006, Revised Programmatic Biological Opinion. The biological opinions, Bald Eagle permit no. MB218918–0, and other project records relating to the USFWS actions, taken pursuant to the Endangered Species Act, 16 U.S.C. 1531–1544, are available by contacting the FHWA, INDOT, or USFWS at the addresses provided above. The Tier 2, section 4, Biological Opinion can be viewed and downloaded from the project Web site at *http://www.i69indyevn.org/wp-content/uploads/Sec4_FEIS/Sec4_Appendix-JJ2.pdf.*

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1)

Robert F. Tally Jr.,

Division Administrator, Indianapolis, Indiana.

[FR Doc. 2011–25003 Filed 9–28–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: October 27, 2011, 12 noon to 3 p.m., Eastern Daylight Time.

PLACE: This meeting will take place telephonically. Any interested person may call 877.820.7831, passcode, 908048 to participate in this meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: September 26, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–25314 Filed 9–27–11; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2006–25862]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated

August 15, 2011, the Union Pacific Railroad (UP) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance extension from certain provisions of the Federal railroad safety regulations contained at 49 CFR 240.117(e)(1)–(4); 49 CFR 240.305(a)(1)–(4) and (6); and 49 CFR 240.307. FRA assigned the petition Docket Number FRA–2006–25862.

The Confidential Close Call Reporting System (C3RS) pilot project for the UP North Platte Service Unit was initially approved by FRA on September 12, 2007. The 5-year time limit is expiring and subject to FRA approval, UP desires to continue the pilot project until November 18, 2014.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays. If you do not have access to the Internet, please contact FRA's Docket Clerk at 202–493–6030 who will provide necessary information concerning the contents of the petition.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within October 31, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on September 23, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–25064 Filed 9–28–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Early Scoping Notice

AGENCY: Federal Transit Administration, DOT.

ACTION: Early Scoping for the Southwest Corridor Plan in Metropolitan Portland, OR.

SUMMARY: The Federal Transit Administration (FTA) and the Metro (Oregon) regional government issue this early scoping notice to advise other agencies and the public that they intend to explore alternatives for improving transit service between downtown Portland and Sherwood, in Multnomah and Washington counties. The early scoping is occurring within the context of the Council on Environmental Quality's regulations for complying with the National Environmental Policy Act (NEPA). Several alternatives will be examined to explore their potential for implementation of a major transit capital investment under the New Starts funding program including light rail, bus rapid transit, rapid streetcar, high occupancy vehicle lanes, high occupancy toll lanes and a transportation system management (TSM) alternative. Public workshops have been planned and are described below. The FTA Alternatives Analysis (AA) process, as described in 49 U.S.C. 5309 (a) (1), will assess a wide range of public transportation alternatives designed to address the transportation problems within the corridor. This process will involve a more robust and detailed level of alternatives and will ultimately lead to the selection of a locally preferred alternative.

The initial phase of AA will provide adequate information to determine which alternative(s) to pursue for further analysis for implementation and what level of environmental analysis would be necessary for project implementation. In the second phase, the project may solicit [or obtain] additional public, agency, and tribal input to identify the nature and scope of the environmental issues that should be addressed during NEPA review, following appropriate public notice (anticipated in 2013). This NEPA scoping process will vary depending on whether the project requires an environmental assessment or an environmental impact statement. Metro and FTA will notify the public of NEPA scoping after that decision has been made.

Information about upcoming public meetings and about the project's purpose is set forth below.

DATES: Six public events will be held to accept comments on the following dates and locations:

SW Corridor Plan/Tigard Open House/Barbur Concept Plan, 6:30 to 8:30 p.m., September 28, 2011, Tigard Library, Tigard.

PSU Farmers' Market, 8:30 a.m. to 2 p.m., October 8, 2011, West Park Avenue and Southwest Montgomery Street, Portland.

King City/Tigard Area Farmers' Market, 9 a.m. to 2 p.m., October 16, 2011, 11831 SW., Pacific Hwy @ Hwy 99 & 217.

24th Annual Great Onion Festival, 9 a.m. to 4 p.m, October 16, 2011, Archer Glen Elementary School, 16155 SW Sunset Blvd. Sherwood.

8th Annual West Coast Giant Pumpkin Regatta, 10 a.m. to 4 p.m., October 22, 2011, Tualatin Commons, Tualatin.

The public meetings will have information and staff available to discuss the project and answer questions, and there will be opportunities for spoken and written comments. Information is also available on the Metro Web site at: *http://www.swcorridorplan.org.* Written scoping comments are requested by October 28, 2011 and can be sent or emailed to the address below, submitted at the public meetings, or provided via the online comment form available at *http://www.swcorridorplan.org.*

Any individual who requires special assistance, such as a sign language interpreter, to participate in a public workshop should contact Jenn Tuerk at (503) 797–1756 or *trans@oregonmetro.gov.*

Interagency and Tribal Coordination Meetings:

Interagency and Tribal coordination meetings will occur at various times throughout this study to identify evaluation criteria, and to assist in developing and screening alternatives during this planning process.

ADDRESSES: Written comments to inform the scope of this project should be submitted by October 28, 2011 to Jenn Tuerk, Metro, 600 NE Grand Ave., Portland, OR 97232. *Telephone:* (503) 797–1756. *E-mail: jenn.tuerk@oregonmetro.gov.*

FOR FURTHER INFORMATION CONTACT: John Witmer, Community Planner, Federal Transit Administration, Region 10, 915 Second Ave., Room 3142, Seattle, WA 98174. *Telephone:* (206) 220–7964; *E-mail: John.Witmer@dot.gov*

SUPPLEMENTARY INFORMATION:

Early Scoping

Early scoping is a NEPA process that is particularly useful in situations where, as here, a proposed action (the locally preferred alternative) has not been identified and several broad alternatives are under consideration. While scoping generally follows issuance of a notice of intent to prepare an Environmental Impact Statement (EIS), which must describe the proposed action, it ''may be initiated earlier, as long as there is appropriate public notice and enough information on the proposal so that the public and relevant agencies can participate effectively.'' Council on Environmental Quality (CEQ), ''Forty Most Asked Questions Concerning CEQ's NEPA Regulations,'' 46 CFR parts 18026, 18030 (1981) (answer to question 13). In this case, available information is adequate to permit the public and agencies to participate effectively. Early scoping provides a way to avoid duplication, waste and delay.

New Starts Planning

New Starts is a discretionary FTA funding program for major capital investments in transit. Planning for an anticipated transit project in the Southwest Corridor will adhere to New Starts' required Alternatives Analysis process as outlined in 49 U.S.C. 5309(a)(1). The alternatives analysis process requires a broad evaluation of alternatives by examining several options of mode and alignment that could address defined mobility needs, in order to determine which particular investment strategy should be advanced for more focused study and development. The result is a clearly defined project problem statement and an analysis of planning-level alternatives, which are helpful precursors to NEPA's required statement of purpose and need and consideration of specific project alternatives. Where state and local planning can lead toward a well defined purpose and need statement and satisfy the requirements for NEPA, including scoping, it should not have to be duplicated later in that process. See 40 CFR 1506.2(b). Accordingly, in the Southwest Corridor AA, Metro will explore alternative configurations of mode, alignment, and stations, and will examine costs, funding, ridership, economic development, land use, engineering feasibility, and environmental factors associated with each. All alternatives will be compared to (i) A ''No-Build'' alternative, which represents the future transportation system through the year 2035 without Southwest Corridor transit improvements, and (ii) a Transportation Systems Management (TSM) alternative, which will examine methods for improving transit in the Southwest Corridor without significant new capital investment (for instance, more frequent bus service, new or expanded park and ride capacity, and/or freeway or arterial transit priority improvements). Following this analysis, a locally preferred alternative—the ''proposed action''—will be determined, as will the appropriate level of NEPA review (environmental assessment or EIS). If an EIS is warranted, FTA will publish a notice of intent in the **Federal Register** and will invite and consider comments on the proposed action's purpose and need, the range of alternatives to be considered, and the potentially significant environmental impacts.

The Southwest Corridor and Regional Planning

The Southwest Corridor runs 15 miles from Portland, Oregon to Sherwood, Oregon. It generally follows Interstate 5 (I–5) and State Highway OR 99W (99W). The two highways parallel each other closely from Portland to Tigard, where they diverge. I–5 and 99W serve as the main travel routes between Portland, Tigard and Tualatin; 99W is the main travel route to the cities of King City and Sherwood. Arterials and bus service support movements in and through the corridor. The arterial, collector, and local street network in the vicinity of much of the corridor is winding and discontinuous because of the varying topography and suburban style development patterns. Pedestrian connectivity is limited, much of the area lacks sidewalks and crosswalks, and bicycle paths are discontinuous.

The Southwest Corridor Plan seeks to create livable and sustainable communities by simultaneously planning for synergistic investments and policies in land use and transportation. The resulting projects and policies from the plan will leverage public investments for improved mobility and increased access to employment, housing, education, and other services. The Southwest Corridor Plan calls for local land use planning, which will identify land use actions and investments (including transit) to support livable communities; a Corridor Refinement Plan to examine the function, mode, and general location of transportation improvements; and the New Starts Alternatives Analysis (AA).

The Southwest Corridor Plan implements the 2040 Growth Concept, adopted in 1995, and the 2035 Regional Transportation Plan (RTP), adopted in 2010. In 2008, the Metro Council adopted six desired outcomes that describe a sustainable and prosperous region; those outcomes, along with the DOT/HUD/EPA Partnership for Sustainable Communities livability principles, guide the Southwest Corridor Plan. The RTP identified the Southwest Corridor as the corridor with the greatest need for multimodal regional transportation investments, and identified the Southwest Corridor as the region's next priority for transit investment measured by 25 evaluation criteria, including the potential to improve transit service for the highest number of new and existing riders. The corridor ranked highest among the 55 corridors examined.

Purposes of the Southwest Corridor AA

The Southwest Corridor AA will determine how a transit investment could best meet livability and community needs, provide environmental benefits, and support the economy. The plan will evaluate the potential for implementation based on costs, benefits and efficiencies of operations. In this corridor, a transit investment should:

- Increase economic opportunities by improving movement/access between markets.
- Increase access to major regional destinations and activity centers; regionally significant employment, educational and commercial centers; and affordable housing.
- Address increasing growth in an already congested corridor by providing affordable transportation options for households and businesses.
- Improve safety and efficiency for all modes of travel .
- Develop solutions to the constraints of the existing landscape.
- Limit carbon and other air pollutant emissions by planning for efficient and

complementary land use and transportation solutions .

- Be fiscally sustainable.
- Avoid or minimize environmental impacts of the transportation system.
- Enhance the natural environment and access to natural areas.

Issued on: September 19, 2011.

R.F. Krochalis,

Regional Administrator, Region 10.

[FR Doc. 2011–25060 Filed 9–28–11; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement; North Corridor Transit Project, Seattle (WA) Metropolitan Area (King and Snohomish Counties)

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS).

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Federal Transit Administration and the Central Puget Sound Regional Transit Authority (Sound Transit) intend to prepare an Environmental Impact Statement (EIS) for Sound Transit's proposed extension of the Central Link Light Rail system from Seattle in King County to the city of Lynnwood in Snohomish County, Washington. The EIS will also be prepared in accordance with Washington's State Environmental Policy Act (SEPA). This Notice of Intent initiates scoping for the EIS, invites interested parties to participate in the EIS process, provides information about the purpose and need for the proposed transit project, includes the general set of alternatives being considered for evaluation in the EIS, and identifies potential environmental effects to be considered. With this notice, Sound Transit and FTA invite public comments on the scope of the EIS, and announce the public scoping meetings that will be conducted. Alternatives being considered for evaluation in the EIS include a No-Build alternative and various build alternatives to develop light rail in the North Corridor. The light rail alternatives are based on the most promising alternatives identified through an Alternatives Analysis study completed by the project. Early scoping for the alternatives analysis phase was previously announced in the **Federal Register** on September 27, 2010. Results of the alternatives analysis are described below.

DATES: Written comments on the scope of alternatives and impacts to be considered in the EIS must be received no later than October 31, 2011, and must be sent to Sound Transit as indicated below.

Information about the proposed project, the Alternatives Analysis findings, and the EIS process will be available at three public scoping meetings and one tribal and agency scoping meeting. Sound Transit and FTA will accept comments at those meetings, which will be held on the following dates and locations:

Public Meetings

October 11, 2011: 6 p.m. to 8 p.m., Shoreline Conference Center, 18560 1st Avenue NE., Shoreline, WA 98155.

October 13, 2011: 6 p.m. to 8 p.m., Embassy Suites, 20610 44th Ave. W, Lynnwood, WA 98036.

October 18, 2011: 6 p.m. to 8 p.m., Ingraham High School, 1819 N. 135th St., Seattle, WA 98133.

Agency and Tribal Meeting

October 11, 2011: 2 p.m. to 4 p.m., Shoreline Conference Center, 18560 1st Avenue NE., Shoreline, WA 98155.

Invitations to the interagency scoping meeting have been sent to appropriate Federal, tribal, state, and local governmental units.

All public meeting locations are accessible to persons with disabilities who may also request materials be prepared and supplied in alternate formats by calling Roger Iwata, (206) 689–4904 at least 48 hours in advance of the meeting for Sound Transit to make necessary arrangement. Persons who are deaf or hard of hearing may call (888) 713–6030 TTY.

Scoping information as well as other general information and a project library are available on Sound Transit's Web site at: *http://www.soundtransit.org/NCTP*.

The scoping period extends to October 31, 2011, or 30 days from the date of this notice, whichever is later. Written scoping comments are requested by October 31, 2011 at the address below, or they can be submitted at the public meetings.

ADDRESSES: Lauren Swift, North Corridor Transit Project, Sound Transit, 401 S. Jackson Street, Seattle, WA 98104–2826, or by e-mail to *northcorridorscoping@soundtransit.org.*

FOR FURTHER INFORMATION CONTACT: John Witmer, Community Planner, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174; Phone: (206) 220–7964; e-mail: *John.Witmer@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background: On September 27, 2010, FTA and Sound Transit issued an early scoping notice in the **Federal Register** for the North Corridor Transit Project Alternatives Analysis. Sound Transit has now completed the Alternatives Analysis, which provides the basis for identifying the most promising alternatives to be evaluated. FTA and Sound Transit are now informing the public of their intent to initiate the NEPA review, based on the findings of the Alternatives Analysis.

Description of the North Corridor

The proposed project would begin at Northgate Transit Center in north Seattle and end at the Lynnwood Transit Center. The corridor generally follows Interstate 5 (I–5), the major north-south route through Washington State and serves a large commuter market traveling between Snohomish and King Counties and the City of Seattle. It is within a geographically constrained area between Puget Sound to the west and Lake Washington to the east, which limits transportation options. This dense urban area comprises one of the region's most productive markets for transit.

The Regional Transit System and the North Corridor

Sound Move, Sound Transit's first phase of regional transit investments for urbanized Pierce, King and Snohomish counties, was approved and funded by voters in 1996. The Sound Move program included light rail, commuter rail and regional express bus infrastructure and service, including the Central Link light rail system between the University of Washington, downtown Seattle, Tukwila and SeaTac. In 2009, Sound Transit began light rail operations between downtown Seattle and SeaTac. Link light rail north from downtown Seattle to the University of Washington is now under construction and is scheduled to open in 2016. The North Link extension from the University of Washington to Northgate is planned to begin operation in 2021. Voters in 2008 authorized funding for the extension of the regional light rail system in the North Corridor from Northgate to Lynnwood as part of the Sound Transit 2 (ST2) Plan. In addition, the ST2 Plan includes an East Link light rail line from downtown Seattle to Bellevue and Redmond to the east, and a South Link extension from SeaTac to Redondo/Star Lake in southern King County.

Alternatives Analysis and Results

The North Corridor Transit Project Alternatives Analysis (AA) Report and SEPA Addendum(available at *http://www.soundtransit.org/NCTP*) responds to Federal regulations for transit projects seeking New Starts funding (Title 49 United States Code [U.S.C.] 5309.) The AA report also serves as an addendum under the Washington State Environmental Policy Act (SEPA) to Sound Transit's Supplemental EIS on the Regional Transit Long-Range Plan (June 2005).

The North Corridor AA considered a Transportation Systems Management (TSM) Alternative, Bus Rapid Transit (BRT) alternatives, and an array of light rail alternatives. The BRT and light rail routes included I–5, SR 99, and portions of 15th Avenue NE, with a variety of station locations and alignments. All alternatives ran from the Northgate light rail station currently being developed through the North Link project at the existing Northgate Transit Center, to the Lynnwood Transit Center.

Sound Transit evaluated these alternatives considering their ability to meet the project's purpose and need statement (stated below), and weighing factors such as ridership and transportation performance, land use, community equity, environmental effects, cost, cost effectiveness and constructability.

Sound Transit conducted the AA in coordination with the jurisdictions and agencies with interests in the corridor, including the cities of Seattle, Shoreline, Mountlake Terrace, Edmonds and Lynnwood; King and Snohomish counties; Metro Transit, Community Transit and the Washington State Department of Transportation.

The AA concluded by identifying the most promising alternatives for further analysis. It identified light rail as the only mode that fully satisfies the North Corridor Transit Project's Purpose and Need related to transportation effectiveness and the corridor's mobility, access, and capacity needs. Bus rapid transit alternatives do not meet project purpose and need elements calling for improved capacity, reliability, ridership, or travel times. Transportation Systems Management (TSM) alternatives also do not meet project purpose and need for the same reasons.

The AA found that light rail must operate in an exclusive right of way with full separation from other traffic in order to provide the capacity, reliability and travel time savings needed to address the growing demand for high capacity transit in the corridor and meet the Purpose and Need of the project.

The AA also found that light rail located along or within the I–5 corridor offers the best overall performance across the broad set of evaluation criteria, including ridership and transportation performance, consistency with regional land use plans, and cost-effectiveness. Other light rail alignments were also evaluated, including an SR 99 elevated alternative. While that alternative has the potential to meet the project's purpose and need, it does not perform as well as the I–5 alternative in most respects and would have substantially higher capital costs, property acquisitions and community impacts during construction. At-grade or mixed-profile light rail along SR 99 would not effectively address the project's purpose and need due to inadequate capacity, low reliability and low travel time benefits, and would be less effective in supporting regional land use objectives than other alternatives.

Elevated and at-grade light rail alignment alternatives along 15th Avenue NE were evaluated in the AA process but not recommended for further consideration because they caused more environmental impacts, particularly to property and neighborhoods, and had lower transportation benefits than other alternatives.

The Alternatives Analysis findings are available on the North Corridor Web site at *http://www.soundtransit.org/NCTP* . Summary information about the AA process and its conclusions is also provided in the Environmental Scoping Information Report available at the same Web site.

The Project's Preliminary Statement of Purpose and Need

The purpose of the North Corridor Transit Project is to improve regional mass transit service from Seattle north into Snohomish County by:

1. Providing reliable, rapid, and efficient two-way, peak and off-peak transit service of sufficient capacity to meet the existing and projected demand between the communities and activity centers located in the North Corridor and the other urban centers in the Central Puget Sound area;

2. Providing a mobility alternative to travel on congested roadways, and improving connections to the regional multimodal transportation system;

3. Supporting North Corridor communities' and the region's adopted land use, transportation and economic development vision, which promotes the well-being of people and communities, ensures economic vitality and preserves a healthy environment; and

4. Supporting the long-range vision, goals, and objectives for transit service established by Sound Transit's Long-Range Plan for high quality regional transit service connecting major activity centers in King, Pierce and Snohomish counties, including a connection between Seattle and Everett.

The project is needed to:

- Meet the rapidly growing needs of the corridor and the region's future residents and workers by increasing mobility, access, and transportation capacity to and from regional growth and activity centers in the North Corridor and the rest of the region, as called for in the region's adopted plans, including the Puget Sound Regional Council's VISION 2040 and Transportation 2040, as well as related county and city comprehensive plans.
- Address the problems of increasing and unreliable travel times for transit users in the North Corridor, who are now dependent on the corridor's highly congested roadway and HOV systems.
- Address overcrowding facing current and future North Corridor transit riders due to insufficient capacity of the current transit system.
- Provide an alternative to automobile trips on I–5 and SR 99, the two primary highways serving the corridor, which are unreliable and over capacity throughout significant portions of the day.
- Implement the long-range vision for HCT service established by Sound Transit's Regional Transit Long-Range Plan, with a regional transit investment that supports economic vitality, preserves the environment, preserves communities, and allows for the future extension of HCT north to Everett.
- Ensure long-term regional mobility, multimodal connectivity, and convenience for North Corridor citizens and communities, including travel-disadvantaged residents and low income and minority populations.
- Provide the transit infrastructure needed to support the development of Northgate and Lynnwood as designated regional growth centers providing housing, employment, public services, and multimodal transportation connections.
- Help support the environmental and sustainability goals of the state and region, including state regulations setting goals for reducing annual per capita vehicle miles traveled by 2050, in accordance with RCW 47.01.440, and the reduction of greenhouse gas emissions Chapter 70.235 RCW (Limiting Green House Gas Emissions)

Potential EIS Alternatives

The results of the AA have led Sound Transit and FTA to consider for inclusion in the EIS the following range of alternatives, on which Sound Transit and FTA request public and agency comments.

No-Build Alternative

NEPA requires consideration of a No-Build Alternative. It reflects the existing transportation system plus any committed transportation improvements. It does not include a major investment in the North Corridor.

Light Rail Alternatives

The North Corridor light rail alternatives would operate light rail trains between Northgate and Lynnwood in two directions, 20 hours per day. Trains up to four cars long would run every 4 minutes during the peak periods and every 10 minutes off-peak. All of the alternatives would provide for a fully exclusive guideway, with no part of the alignment shared with other vehicles. All of the light rail alternatives would require Sound Transit to purchase new light rail vehicles, and would involve other transit system and network modifications. As part of the larger ST2 program to expand the regional light rail system, the North Corridor Transit Project would also rely upon expanded regional light rail operations and maintenance facilities, in conjunction with ST2 plans for extensions of light rail to the east and south. The expansion of Sound Transit's regional light rail operations and maintenance facilities is independent of the North Corridor Transit Project and has a separate environmental review process.

Potential I–5 Light Rail Alternatives

Potential I–5 light rail alternatives would be located generally along I–5 with new stations proposed at NE., 145th Street, NE., 185th Street, Mountlake Terrace Transit Center (I–5 at SW., 236th Street), and the Lynnwood Transit Center. Park-and-ride structures with up to 500 new stalls each would be located at the North 145th Street, North 185th Street, and Lynnwood Transit Center stations.

The AA produced a conceptual I–5 alignment that Sound Transit is using to identify other potential I–5 alignment alternatives to be considered further in the EIS. The general I–5 alignment from the AA includes at-grade and elevated light rail sections along the east side of I–5 from Northgate to Mountlake Terrace, in the median north of Mountlake Terrace before crossing to the west of I–5 to reach the Lynnwood Transit Center. This general alignment builds on existing park-and-ride and transit center investments and local service connections, avoids repeated crossings of I–5, and avoids major reconstruction of I–5 roadways.

Variations could include alignments at different locations relative to the east or west sides of I–5 or the I–5 median, different locations for crossing I–5, or different combinations of elevated or at-grade profiles or station locations and layouts.

Potential SR 99 Light Rail Alternatives

A SR 99 light rail elevated alternative would be based on the AA conceptual alignment, which begins on an elevated structure at the Northgate Link Station, continuing north and then turning west over I–5, and then along Northgate Way and North 110th Street to the median of SR 99. It would transition from the median to the west side of SR 99 at about North 120th Street, then operate on elevated structure on the west side of SR 99 to SR 104 where it turns east to reach a Mountlake Terrace Station at 236th Street SW., and I–5. This general alignment avoids multiple crossings and reconstruction of SR 99, and directly serves the Shoreline Park-and-Ride. From the Mountlake Terrace station it would continue north to Lynnwood similar to the I–5 light rail alternatives. The five light rail stations assumed in the AA were located at SR 99 near North 130th Street, North 160th Street, and the Shoreline Park-and-Ride, with Mountlake Terrace and Lynnwood Transit Center stations the same as those assumed for I–5 light rail. At the Shoreline Park-and-Ride, a 1,100 stall parking structure would be developed at the Shoreline Park-and-Ride, adding 500 new spaces, and relocating 200 spaces from the Aurora Village Transit Center. The Aurora Village Transit Center would also be relocated to the Shoreline Park-and-Ride to create a consolidated multimodal transit hub.

If SR 99 corridor light rail alternatives are advanced to the EIS for further study, variations could include alignments at different locations relative to the east or west sides of SR 99 or the SR 99 median, or alternate station locations and layouts.

Scope of Environmental Analysis

The EIS process explores potentially significant effects of implementing the proposed action (and alternatives to the proposed action) on the physical, human, and natural environment. Areas of investigation include, but are not limited to, transportation, land use, development potential, land acquisition and displacements, park and recreation resources, historic and cultural resources, environmental justice, visual and aesthetic qualities, air quality, noise and vibration, energy use, safety and security, and ecosystems, including threatened and endangered species. These effects will be evaluated for both the construction period and the long-term period of operation. Indirect, secondary and cumulative impacts will also be evaluated. Through the EIS process, measures to avoid, minimize, or mitigate significant adverse impacts will be identified.

FTA's regulations implementing NEPA (further described below), as well as provisions enacted through the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), call for public involvement in the EIS process. Section 6002 of SAFETEA–LU requires that this agency: (1) Extend an invitation to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project to become ''cooperating'' or ''participating agencies,'' (2) provide an opportunity for involvement by agencies and the public in helping to define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the impact statement, and (3) establish a plan for coordinating public and agency participation in and comment on the environmental review process.

This notice of intent constitutes an invitation to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project to become a participating agency in the environmental review process. It is also an invitation for public and agency involvement. A draft Coordination Plan for public and agency involvement is available for review at the project Web site. It identifies the project's coordination approach and structure, details the major milestones for agency and public involvement, and includes an initial list of interested agencies and organizations. FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the regulations of the Council on Environmental Quality implementing NEPA, and FTA's own NEPA regulations (40 CFR parts 1500–1508, and 23 CFR part 771); the air quality conformity regulations of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93); the Section 404(b)(1) guidelines of EPA (40 CFR part 230); the

regulations implementing Section 106 of the National Historic Preservation Act (36 CFR part 800); the regulations implementing section 7 of the Endangered Species Act (50 CFR part 402); Section 4(f) of the Dept. of Transportation Act (23 CFR part 774); and Executive Orders 12898 on environmental justice, 11988 on floodplain management, and 11990 on wetlands.

Scoping

FTA and Sound Transit invite comments from interested individuals, organizations, tribes and agencies. Comments are welcome regarding the preliminary statement of purpose and need; the alternatives to be evaluated in the EIS; and any significant environmental issues related to the alternatives. Suggested reasonable alternatives that meet the project purpose and need will be seriously considered.

To assist the public during scoping, Sound Transit has prepared an Environmental Scoping Information Report describing the project, its planning history, the potential alternatives and station locations, the potential impact areas to be evaluated, summary of results from the Alternative Analysis (AA), and the preliminary EIS schedule. You may request a copy of it from Roger Iwata, Sound Transit, 401 S. Jackson Street, Seattle, WA 98104–2826, Telephone: (206) 689–4904, or e-mail: *roger.iwata@soundtransit.org*. It is also available at *http://www.soundtransit.org/NCTP.*

Following the close of the comment period, Sound Transit will publish a summary report documenting the public and agency comments it has received. In late 2011 or early 2012, the Sound Transit Board is expected to consider a motion confirming the purpose and need for the project, the scope of environmental review, and the alternatives to be considered in the draft EIS, possibly including identification of a locally-preferred alternative.

Paperwork Reduction

The Paperwork Reduction Act seeks, in part, to minimize the cost to the taxpayer of the creation, collection, maintenance, use, dissemination, and disposition of information. Consistent with this goal and with principles of economy and efficiency in government, it is FTA policy to limit insofar as possible distribution of complete printed sets of environmental documents. Accordingly, unless a specific request for a complete printed set of environmental documents is received (preferably in advance of printing), Sound Transit will distribute only the executive summary of the environmental document together with a Compact Disc of the complete environmental document. A complete printed set of the environmental document will be available for review at the grantee's offices and elsewhere; an electronic copy of the complete environmental document will also be available on Sound Transit's web page.

Issued on: September 19, 2011.

Linda Gehrke,

Acting Regional Administrator, Region 10.

[FR Doc. 2011–25050 Filed 9–28–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket FTA–2011–0055]

Environmental Justice; Proposed Circular

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of proposed circular and request for comments.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its Web site, proposed guidance in the form of a Circular on incorporating environmental justice principles into plans, projects, and activities that receive funding from FTA. This proposed guidance provides recommendations to State Departments of Transportation, Metropolitan Planning Organizations, public transportation providers, and other recipients of FTA funds on how to fully engage environmental justice populations in the public transportation decisionmaking process; how to determine whether environmental justice populations would be subjected to disproportionately high and adverse human health or environmental effects as a result of a transportation plan, project, or activity; and how to avoid, minimize, or mitigate these effects. By this notice, FTA invites public comment on this proposed Circular.

DATES: Comments must be submitted by December 2, 2011. Late-filed comments will be considered to the extent practicable.

Public Meetings: FTA and PolicyLink will co-sponsor a series of Information Sessions regarding FTA's proposed Environmental Justice Circular and proposed revisions to the Title VI Circular (see docket FTA–2011–0054 for more information on the proposed revisions to the Title VI Circular). The meetings listed below will provide a forum for FTA staff to make oral presentations about the two proposed Circulars and allow attendees an opportunity to ask clarifying questions. Additionally, the sessions are intended to encourage interested parties and stakeholders to submit their comments directly to the official docket per the instructions found in the **ADDRESSES** section of this notice.

These Information Sessions will take place as follows: Kansas City, MO on Tuesday, October 18, 2011 from 6–9 p.m.; Boston, MA on Tuesday, November 1, 2011 from 6–9 p.m.; Detroit, MI on Wednesday, November 9, 2011 from 6–9 p.m.; the San Francisco Bay Area on Monday, November 14, 2011 from 6–9 p.m.; and Atlanta, GA on Thursday, November 17, 2011 from 6–9 p.m.. All locations will be ADA- and transit-accessible.

For details about the exact location of each Information Session (*i.e.,* site name and address), please visit *http://www.fta.dot.gov/FTAInformationSessions.*

In consideration of the comfort and safety of all attendees and the maximum seating capacity of meeting rooms, FTA requests RSVPs for the Information Sessions. To RSVP, please visit *http://www.FTAInformationSessions.com.* At the same Web link, persons with disabilities may request a reasonable accommodation.

ADDRESSES: You may submit comments to DOT Docket ID Number FTA–2011–0055 by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

Fax: 202–493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2011–0055) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change

to *http://www.regulations.gov* including any personal information provided and will be available to Internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477). *Docket:* For access to the docket to read background documents and comments received, go to *http://www.regulations.gov* at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave., SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program questions, Amber Ontiveros, Office of Civil Rights, Federal Transit Administration, 1200 New Jersey Ave., SE., Room E54–422, Washington, DC 20590, phone: (202) 366–4018, fax: (202) 366–3809, or e-mail, *Amber.Ontiveros@dot.gov*. For legal questions, Bonnie Graves, Office of Chief Counsel, same address, room E56–306, phone: (202) 366–4011, or e-mail, *Bonnie.Graves@dot.gov*.

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I. Introduction

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' was signed by President Clinton on February 11, 1994. Subsequent to issuance of the Executive Order, the U.S. Department of Transportation (DOT) issued an Order for implementing the Executive Order on environmental justice (EJ). The DOT Order (Order 5610.2, ''Order to Address Environmental Justice in Minority Populations and Low-Income Populations,'' 62 FR 18377, Apr. 15, 1997) describes the process the Department and its modal administrations (including FTA) will use to incorporate EJ principles into programs, policies and activities; the DOT Order does not provide guidance for FTA grantees on what is expected regarding integrating EJ principles into the public transportation decisionmaking process. FTA has not previously published separate and distinct guidance for its grantees, but instead has included environmental justice concepts in its Title VI Circular (Circular 4702.1A).

Several instances of Title VI and EJ issues raised by FTA grantees led FTA to initiate a comprehensive management review of the agency's core guidance to grantees in these and other areas of civil rights responsibilities for public transportation. Based on that review, FTA determined a need to clarify and distinguish what grantees should do to comply with Title VI regulations; and, separately, what grantees should do to facilitate FTA's implementation of Executive Order 12898.

Therefore, FTA is proposing a new Circular 4703.1, ''Environmental Justice Policy Guidance for Federal Transit Administration Recipients,'' in order to provide grantees with a distinct framework to assist them as they integrate principles of environmental justice into their public transportation decisionmaking processes, from planning through project development, operation and maintenance. The Circular does not contain any new requirements, policies or directives. In addition to the EJ Circular, FTA has also published, in this issue of the **Federal Register**, a notice of availability and request for comment for proposed revisions to FTA's Title VI Circular (Docket number FTA–2011–0054). The Title VI Circular removes most references to environmental justice in order to clarify the statutory and regulatory requirements for compliance with Title VI. FTA expects that the additional clarification provided by both documents will provide grantees the guidance they need to properly incorporate both Title VI and environmental justice into their public transportation decisionmaking. FTA encourages commenters to review both notices and provide comments on both documents.

This notice provides a summary of the proposed Circular. The Circular itself is not included in this notice; an electronic version may be found on FTA's Web site, at *http://www.fta.dot.gov,* and in the docket at *http://www.regulations.gov.* Paper copies of the Circular may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366–4865. FTA seeks comment on the proposed Circular.

II. Chapter-by-Chapter Analysis

A. Chapter I—Environmental Justice and Public Transportation

Chapter I of the proposed Circular is an introductory chapter. It provides a brief background of the Executive Order and describes the purpose of the Circular. Importantly, this chapter also states what this Circular is not—the Circular does not contain any new requirements, policies or directions. This chapter contains the principles of environmental justice as derived from the U.S. DOT's Order on environmental justice, and describes broadly when an EJ analysis will be conducted and the elements of that analysis. Some terms necessary to explain the EJ analysis are defined; for ease of reference, FTA has defined ''minority populations and/or low-income populations'' as ''EJ populations.'' The chapter ends with a summary of what will be discussed in subsequent chapters.

B. Chapter II—Tools and Techniques for Conducting an Environmental Justice Analysis

This chapter is designed to provide tools to assist grantees as they conduct environmental justice analyses of their plans, programs, projects and activities. The chapter begins with an overview of a proposed framework for conducting an EJ analysis. As described in the framework, there are three steps for conducting an EJ analysis: (1) Determine whether there are any EJ populations potentially impacted by the activity; (2) if one or more EJ populations are present, consider the potential effects of the activity on the EJ populations; and (3) determine if any disproportionately high and adverse human health and environmental effects can be avoided, minimized or mitigated.

After describing the basic framework, the chapter then discusses in more detail some of the elements of the analysis. First are thresholds: when is an EJ population present? The Council on Environmental Quality (CEQ) issued guidance to Federal agencies on environmental justice under environmental laws (''Environmental Justice, Guidance under the National Environmental Policy Act,'' Dec. 10, 1997) that suggested thresholds for minority populations; FTA proposes adapting this guidance to apply to both minority populations and low-income populations for consistency, and to apply these thresholds to all EJ analyses.

FTA seeks comment on the recommended thresholds.

Next is proposed guidance on preparing a residential demographic profile. This section provides information on data sources, including how grantees can use available data. This section also discusses how to determine the geographic area for analysis, which will depend on the planning area or the impact area of the project. The next section, benefits and burdens analysis, describes how an analysis will need to be scaled depending on the level of planning (e.g., Statewide, regional, corridor-level, *etc.*) or the size of the project or activity. This section provides suggestions on the types of metrics to use when evaluating the benefits and burdens of public transportation projects and activities. This section also clarifies that when a plan or project will serve a predominantly minority area, it is still necessary to analyze the effects on low-income populations, since minority populations and low-income populations do not necessarily overlap. Finally, this chapter proposes a list of factors to consider when determining whether disproportionately high and adverse human health or environmental impacts exist.

C. Chapter III—Achieving Meaningful Public Engagement With Environmental Justice Populations

Chapter III proposes recommended strategies and techniques for ensuring that EJ populations are not just at the public transportation decisionmaking table, but have a voice in the decisionmaking process. This chapter first suggests identifying the members of a community, as doing so will assist grantees in developing successful communications and outreach strategies. Building relationships with community-based organizations, environmental justice networks, and others can assist grantees in developing these strategies. Traditional public outreach typically involves public hearings required by Federal, State or local law for certain transportation decisions. This chapter proposes recommendations on making this process more inclusive and user-friendly, including consideration of location, timing, format and accessibility.

This chapter also describes non-traditional outreach strategies that may result in greater participation by EJ populations. Some of these proposed strategies include informal group meetings, traditional and non-traditional media, as well as digital media. Additional strategies to increase involvement of EJ populations include direct mail campaigns, community-led events, partnerships with community-based organizations and leaders, citizen advisory committees, and public engagement teams. This chapter recognizes that public engagement is not a one-size-fits-all approach. A grantee should scale its public engagement efforts to the impacts of the plan, project or activity, as well as to the resources available to the grantee; most importantly, the grantee will determine, based on a number of factors, which public engagement strategies will likely be effective at engaging the local EJ populations. FTA seeks comment on whether there are additional non-traditional outreach strategies that should be included in this guidance.

D. Chapter IV—Integrating Principles of Environmental Justice in Transportation Planning and Service Delivery

This chapter proposes guidance on incorporating EJ principles into Statewide, metropolitan and local planning processes. Many of the strategies described in this chapter apply not only to the required Statewide and metropolitan planning processes, but also to planning activities undertaken by transit providers and other local entities with public transportation planning and service-delivery responsibilities. This chapter builds on the residential demographic profile described in Chapter II and describes specific planning tools for developing these profiles. The chapter briefly outlines the Statewide and metropolitan planning public engagement requirements in the joint FHWA/FTA planning regulations, and proposes strategies to achieve public participation in planning activities. Each plan, whether Statewide, metropolitan, or local, should encompass the goals and visions for future transportation for a region or area. This chapter explains why it is important to develop those goals and visions with input from EJ populations.

Since public transportation providers and other local entities often engage in some level of planning, this chapter addresses those planning activities, such as planning for service reductions or restructuring. This chapter provides some sample questions to guide the discussion with the public to inform planning officials on how well current operation, management, and maintenance of facilities and services serve the needs of communities, with particular attention to the parity between EJ and non-EJ populations. This chapter recommends that public transportation providers and planning officials maintain a regular and open dialogue with EJ populations regarding the effectiveness of the plan, and to identify trends in public transportation for future plans.

E. Chapter V—Incorporating Environmental Justice Principles Into the NEPA Process

This chapter provides grantees with a road map for incorporating environmental justice analysis into the National Environmental Policy Act (NEPA) process. Federal agencies are required to consider the effects of Federally-funded projects on the environment; if FTA determines there is a disproportionately high and adverse human health or environmental effect on an EJ population, the EJ analysis will be part of the NEPA document. This chapter describes how a grantee can incorporate EJ principles into its analysis of the environmental impacts of a proposed project by defining the project impact area, identifying alternatives, identifying adverse environmental effects, identifying project benefits, and identifying mitigation measures and enhancements. Finally, this chapter provides guidance related to projects that qualify as categorical exclusions and information related to NEPA-specific public engagement strategies.

F. Chapter VI—Understanding the Differences and Similarities Between Title VI and Environmental Justice

As stated previously, FTA has observed that the public, grantees, and FTA staff have sometimes considered environmental justice and Title VI to be interchangeable—they are not. This chapter outlines the source of environmental justice—Executive Order 12898—and the source of Title VI—the Civil Rights Act of 1964—and then describes, in table format, the key differences between the two. This chapter cautions recipients that an EJ analysis will not satisfy Title VI requirements, and a Title VI analysis likely will not satisfy EJ, since Title VI does not include low-income populations. Finally, this chapter includes an example of a project and describes the type of analyses required for that project.

G. Appendix—Definitions, Authorities and References

The appendix includes a comprehensive list of definitions, most of which are in either the DOT Order on environmental justice or the FHWA/FTA planning regulations, and included in this document for ease of reference. A list of authorities from which this

guidance is derived is also included. This list is not meant to be exhaustive, but does include the authorities relevant to the consideration of EJ principles in the transportation context. Last is a list of references, including **Federal Register** notice and other citations as appropriate to enable readers to view the source documents.

III. Conclusion

Included in the proposed Circular in a few places are examples, such as the example in Chapter II regarding defining the area of analysis for a plan or project, and the example in Chapter VI regarding differences between an EJ analysis and a Title VI analysis. FTA seeks comment on whether more examples would be helpful, and if so, what types of examples would provide the most clarity for grantees.

Issued in Washington, DC this 26th day of September 2011.

Peter M. Rogoff,

Administrator.

[FR Doc. 2011–25123 Filed 9–28–11; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2011–0054]

Title VI; Proposed Circular

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of proposed Circular and request for comments.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its Web site, proposed guidance in the form of a Circular to assist grantees in complying with Title VI of the Civil Rights Act of 1964. The purpose of this Circular is to provide recipients of FTA financial assistance with instructions and guidance necessary to carry out the U.S. Department of Transportation's Title VI regulations (49 CFR part 21). FTA is updating its Title VI Circular to clarify requirements for compliance. By this notice, FTA invites public comment on the proposed Circular.

DATES: Comments must be submitted by December 2, 2011. Late-filed comments will be considered to the extent practicable.

Public Meetings: FTA and PolicyLink will co-sponsor a series of Information Sessions regarding FTA's proposed revisions to the Title VI Circular and proposed Environmental Justice Circular (see docket FTA–2011–0055 for more information on the proposed Environmental Justice Circular). The meetings listed below will provide a forum for FTA staff to make oral presentations about the two proposed Circulars and allow attendees an opportunity to ask clarifying questions. Additionally, the sessions are intended to encourage interested parties and stakeholders to submit their comments directly to the official docket per the instructions found in the **ADDRESSES** section of this notice.

These Information Sessions will take place as follows: Kansas City, MO on Tuesday, October 18, 2011 from 6–9 p.m.; Boston, MA on Tuesday, November 1, 2011 from 6–9 p.m.; Detroit, MI on Wednesday, November 9, 2011 from 6–9 p.m.; the San Francisco Bay Area on Monday, November 14, 2011 from 6–9 p.m.; and Atlanta, GA on Thursday, November 17, 2011 from 6–9 p.m. All locations will be ADA- and transit-accessible.

For details about the exact location of each Information Session (*i.e.,* site name and address), please visit *http://www.fta.dot.gov/FTAInformationSessions.*

In consideration of the comfort and safety of all attendees and the maximum seating capacity of meeting rooms, FTA requests RSVPs for the Information Sessions. To RSVP, please visit *http://www.FTAInformationSessions.com.* At the same Web link, persons with disabilities may request a reasonable accommodation.

ADDRESSES: Please submit your comments by only one of the following methods, identifying your submission by docket number FTA–2011–0054. All electronic submissions must be made to the U.S. Government electronic site at *http://www.regulations.gov.*

(1) *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

(2) *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.

(3) *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

(4) *Fax:* 202–493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2011–0054) for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA received your comments, include a self-addressed stamped postcard. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided and will be available to Internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477). *Docket:* For access to the docket to read background documents and comments received, go to *http://www.regulations.gov* at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave., SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program questions, Amber Ontiveros, Office of Civil Rights, Federal Transit Administration, 1200 New Jersey Ave., SE., Room E54–422, Washington, DC 20590, phone: (202) 366–4018, fax: (202) 366–3809, or e-mail, *Amber.Ontiveros@dot.gov.* For legal questions, Bonnie Graves, Office of Chief Counsel, same address, room E56–306, phone: (202) 366–4011, or e-mail, *Bonnie.Graves@dot.gov.*

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I. Overview

FTA is updating its Title VI Circular, last revised in 2007, to clarify what recipients must do to comply with the U.S. Department of Transportation (DOT) Title VI regulations. This notice provides a summary of proposed changes to FTA Circular 4702.1A, ''Title VI and Title VI–Dependent Guidelines for FTA Recipients.'' The final Circular, when adopted, will supersede the existing Circular.

The proposed Circular would incorporate lessons learned from triennial reviews, discretionary Title VI compliance reviews, and a

comprehensive review of every Title VI Program submitted to FTA. In these reviews, FTA found some problems, several of them related to ambiguous language in the existing Circular. The proposed Circular reorganizes, clarifies, and provides examples of the information that must be included in a Title VI Program.

The existing Title VI Circular contains many references to environmental justice (EJ). Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' was signed by President Clinton on February 11, 1994. Subsequent to issuance of the Executive Order, DOT issued an Order for implementing the Executive Order on environmental justice. The DOT Order (Order 5610.2, ''Order to Address Environmental Justice in Minority Populations and Low-Income Populations,'' 62 FR 18377, Apr. 15, 1977) describes the process the Department and its modal administrations (including FTA) will use to incorporate EJ principles into programs, policies and activities; the DOT Order does not provide guidance for FTA grantees on what is expected regarding integrating EJ principles into the public transportation decisionmaking process. FTA has not previously published separate and distinct EJ guidance for its grantees, but instead has included environmental justice concepts in its Title VI Circular (Circular 4702.1A).

Several instances of Title VI and EJ issues raised by FTA grantees led FTA to initiate a comprehensive management review of the agency's core guidance to grantees in these and other areas of civil rights responsibilities for public transportation. Based on that review, FTA determined a need to clarify and distinguish what grantees should do to comply with Title VI regulations; and, separately, what grantees should do to facilitate FTA's implementation of Executive Order 12898.

Therefore, FTA is proposing to remove most references to environmental justice from the Title VI Circular in order to clarify the statutory and regulatory requirements for compliance with Title VI. In addition to the proposed revised Circular, FTA has also published, in this issue of the **Federal Register**, a notice of availability and request for comments for a new proposed EJ Circular 4703.1, ''Environmental Justice Policy Guidance for Federal Transit Administration Recipients'' (Docket number FTA–2011–0055). The EJ Circular is designed to provide grantees with a distinct framework to assist them as they integrate principles of environmental justice into their public transportation decisionmaking processes, from planning through project development, operation and maintenance. FTA expects the additional clarification provided by both Circulars will provide grantees the guidance and direction they need to properly incorporate both Title VI and environmental justice into their public transportation decisionmaking. FTA encourages commenters to review both notices and provide comments on both documents.

This notice provides a summary of the proposed changes to the Title VI Circular. The proposed Circular itself is not included in this notice; instead, an electronic version may be found on FTA's Web site, at *http://www.fta.dot.gov,* and in the docket, at *http://www.regulations.gov.* Paper copies of the proposed Circular may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366–4865. FTA seeks comment on the proposed Circular.

Readers familiar with the existing FTA Circular 4702.1A will notice a number of changes to the proposed Circular. For example, we have changed the name of the Circular to ''Title VI Requirements and Guidelines for Federal Transit Administration Recipients,'' removing the ''Title VI–Dependent'' in the existing title as it refers to the EJ provisions in the existing Circular, and adding ''requirements'' to reflect inclusion of required actions to ensure compliance with DOT Title VI regulations. We propose retaining ''guidance'' in the title as the Circular includes actions that FTA encourages or recommends. In addition, we propose changing the format to make this Circular consistent with the style of other Circulars FTA has recently updated. At the same time, we have tried to maintain some consistency with the previous document; for example, most of the chapters still cover the same or similar subject matter. We discuss substantive changes in content in the chapter-by-chapter analysis.

One important change made throughout the proposed Circular is that we have, where applicable, included the text of the DOT Title VI regulation that applies to the requirement. The existing Circular often cites the regulation, but does not quote or summarize the text, which leaves readers wondering what the rule really says. We believe it will be helpful for recipients to see the text or a summary of the regulation so they understand the nexus between the regulation and the requirements in the Circular.

II. Chapter-by-Chapter Analysis

A. Chapter I—Introduction and Background

Chapter I of the existing Circular is entitled, ''How to Use This Circular.'' The content of this chapter has been eliminated or moved to other chapters as appropriate. Chapter I of the proposed Circular is an introductory chapter and covers general information about FTA and how to contact us, briefly reviews the authorizing legislation for FTA programs generally, provides information about FTA's posting of grant opportunities on Grants.gov, includes definitions applicable to Title VI, and provides a brief history of environmental justice and Title VI. Where applicable, we have used the same definitions found in rulemakings, other Circulars, and DOT Orders to ensure consistency. Importantly, we have restored the term ''primary recipient,'' which is found in the DOT Title VI regulations and FTA's 1988 circular but is not in the existing Title VI Circular. A primary recipient is a recipient that extends Federal financial assistance to a subrecipient. We also propose using the term ''recipient'' to mean any recipient, whether a direct recipient, a designated recipient, a primary recipient, or a subrecipient. We have also included a definition of ''provider of public transportation'' or ''transit provider,'' to mean any entity that provides public transportation, whether a State, local or regional entity, and inclusive of public and private entities. This term is used exclusively in Chapter IV. We have restored the definition of ''minority transit route,'' a term removed during the last Circular revision. We have added some flexibility to the definition, allowing recipients to base the determination on route mileage, demographics, or ridership. Finally, there is a section describing environmental justice that references the proposed EJ Circular that FTA is developing concurrently with the proposed changes to the Title VI Circular. This section provides a permanent cross-reference to that guidance. FTA seeks comment on the content of Chapter I.

B. Chapter II—Program Overview

We propose amending some of the content of this chapter. As previously stated, definitions have been moved to Chapter I. This chapter starts with program objectives and is followed by statutory and regulatory authority, as well as additional authority for the policies, requirements and recommendations stated in the Circular.

Consistent with our goal of separating Title VI and EJ and developing the EJ Circular, we propose removing both the reference to DOT's Order on Environmental Justice and the objective related to addressing EJ principles from this chapter. We propose moving the ''determination of deficiencies'' subsection in the Reporting Requirements section and the Determinations section to Chapter VIII, Compliance Reviews.

In the existing Reporting Requirements section, as well as in other places throughout the existing Circular, there is a statement that recipients are required to submit Title VI Programs every three years, or every four years in the case of metropolitan planning organizations (MPOs) that are direct recipients of FTA funds. We propose amending the reporting requirement so that all recipients are required to submit a Title VI Program every three years. We propose amending the Reporting Requirements section further by including a requirement that a recipient's board of directors or appropriate governing entity approve the Title VI Program before the recipient submits it to FTA. We anticipate such a requirement will greatly improve the quality of Title VI Programs that FTA receives. Further, we expect this requirement will add clarity and transparency to implementation of the Title VI Program at the local level. Recipients will be required to submit, with the Title VI Program, a copy of the Board resolution, meeting minutes, or similar documentation as evidence that the board of directors or appropriate governing entity has approved the program. FTA seeks comment on the content of Chapter II.

C. Chapter III—General Requirements and Guidelines

Chapter III in the existing Circular is ''Requirements for Applicants.'' We propose eliminating the one-page chapter dedicated to applicants, and consolidating this information into what is the existing Chapter IV. Proposed Chapter III thus has the same name as the existing Chapter IV: ''General Requirements and Guidelines.'' The proposed Chapter III includes content from the existing Chapters III and IV.

We added the regulatory reference for the requirement to provide Title VI assurances, but otherwise the text remains substantially the same as the similar section in existing Chapter IV. The information for applicants has not changed, except that we added one sentence at the end related to first-time applicants. This information is required under U.S. Department of Justice (DOJ) regulations. We have also removed references to environmental justice.

We propose keeping much of the content of the existing Chapter IV in this chapter, but it has been reformatted to provide more clarity. Proposed Chapters III, IV, V and VI, which describe the specific requirements for different types of recipients' Title VI Programs, follow the same format. They start with an introduction and some general information. Following that is the requirement to prepare and submit a Title VI Program. The section describing the Title VI Program, in each chapter, cites the regulation and includes the regulatory text or a summary of the regulatory text. It provides information on Board or other governing entity approval of the Title VI Program. It then lists the elements required in the Title VI Program for that type of recipient. The sections following the Title VI Program submission requirements describe in more detail what FTA expects, and provide direction to enable recipients to comply.

For example, Chapter III provides the list of elements that must be in every recipient's (and subrecipient's) Title VI Program. The first item on the list is ''a copy of the recipient's Title VI notice to the public that indicates the recipient complies with Title VI, and informs members of the public of the protections against discrimination afforded to them by Title VI. Include a list of locations where the notice is posted.'' The next section in that chapter is, ''Requirements to Notify Beneficiaries of Protection under Title VI.'' This section cites the regulation and provides information regarding what must be included in a Title VI notice. This section also clarifies the existing requirement by describing how documents should be disseminated, when documents must be translated, and notes that a subrecipient may adopt the primary recipient's Title VI notice. Thus, the detailed description for each required element is presented in a format that clarifies the existing requirements. In addition, we have provided samples of required documents in the Appendices.

Since the proposed Chapter III applies to all recipients, we include in this chapter information on how to upload a Title VI Program to FTA's Transportation Electronic Award Management (TEAM) system. The Title VI Program must be uploaded to TEAM no fewer than thirty calendar days prior to the date of expiration of the previously approved Title VI Program. This is a new requirement, but FTA has previously asked for voluntary submission of revised Title VI Programs thirty days in advance of expiration of the previously approved Title VI Program. This section also notes how the status of a recipient's Title VI Program will be noted in TEAM. The four status determinations are ''approval,'' ''conditional approval,'' ''pending'' and ''expired.'' We propose removing the ''eliminating redundancy'' subsection in the existing Circular, as we have determined that recipients must include all required information in each Title VI Program submission.

We propose continuing the reporting requirement exemption for the University Transportation Center Program, National Research and Technology Program, Over the Road Bus Accessibility Program and Public Transportation on Indian Reservations program. We have also included a new provision that FTA may exempt a recipient, upon receipt of a request for waiver submitted to the Director of the Office for Civil Rights, from the requirement to submit a Title VI Program, or from some elements of the Title VI Program. There may be unique situations that justify the application of this exemption. The absence of the requirement to submit a Title VI Program does not obviate the underlying obligations to comply with Title VI.

We propose including more information in several of the sections describing existing Title VI Program elements in order to clarify the requirements. For example, we provide significantly more information in the public participation section, while still allowing wide latitude for recipients to determine how, when, and how often to engage in public participation activities, and which specific measures are most appropriate. We have referenced the public participation requirements of 49 U.S.C. 5307(c) and 5307(d)(1)(I) as well as the joint FTA/FHWA (Federal Highway Administration) planning regulations at 23 CFR part 450. This section also cross-references the proposed EJ Circular being developed concurrently with the proposed revisions to the Title VI Circular.

The section that addresses the existing requirement for a Language Implementation Plan for Limited English Proficient (LEP) persons now contains a summary of the DOT LEP guidance. Specifically, we propose including a description of the four factor analysis, information on how to develop a Language Implementation Plan, and a summary of the ''safe harbor'' provision.

We propose restoring the requirement, found in the regulations but not the existing Circular, that a recipient may not, on the grounds of race, color, or national origin, ''deny a person the

opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.'' As part of the Title VI Program, for non-elected transit planning, advisory, or similar decisionmaking body, recipients shall provide a table depicting the racial breakdown of the membership of those bodies, and a description of the efforts made to encourage participation of minorities on such decisionmaking bodies.

We propose moving the topics, ''Providing Assistance to Subrecipients'' and ''Monitoring Subrecipients,'' found in the Requirements for States chapter of the existing Circular, to this chapter, as these are existing requirements that are applicable to all recipients that pass funds through to subrecipients, not just States. The requirement to collect Title VI Programs from subrecipients is a new requirement for transit providers that pass funds through to subrecipients; but we would note that anytime a recipient passes funds through to a subrecipient, the entity passing funds through is responsible for ensuring their subrecipients are complying with all Federal requirements, not just Title VI. Collecting and reviewing a subrecipient's Title VI Program will assist the primary recipient/transit provider in ensuring the subrecipient is in compliance. The language in these sections is substantially similar to the language in the existing Circular.

Finally, we have removed the section, ''Guidance on Conducting an Analysis of Construction Projects'' and inserted in its place, ''Determination of Site or Location of Facilities.'' The language in the existing Circular addresses environmental justice concepts as incorporated into National Environmental Policy Act (NEPA) documentation, and we have moved this analysis to the EJ Circular. We propose revising this section so that it cites the DOT Title VI regulation and describes the requirements related to siting facilities. Recipients must complete a Title VI analysis during project development to determine if the project will have disparate impacts on the basis of race, color, or national origin. If it will have such impacts, the recipient may only locate the project in that location if there is a substantial legitimate justification for locating the project there, and where there are no alternative locations that would have a less adverse impact on members of a group protected under Title VI.

FTA seeks comment on the content and format of Chapter III.

D. Chapter IV—Requirements and Guidelines for Transit Providers

Proposed Chapter IV covers much of the information that is in the existing Chapter V. Consistent with our desire to have the chapters follow the same format, this chapter starts with an introduction, includes a description as to which entities it applies, and then describes the requirement to prepare and submit a Title VI Program, followed by specific information related to each of the elements contained in the Title VI Program.

In the existing Circular, Chapter V applies to ''recipients that provide service to geographic areas with a population of 200,000 people or greater under 49 U.S.C. 5307.'' This sentence has created some confusion as to whether recipients in areas with populations over 200,000 but that do not receive funds under 49 U.S.C. 5307 are required to comply with this chapter. In order to eliminate this confusion, we propose a new threshold: Any provider of public transportation, whether a State, regional or local entity, and inclusive of public and private entities, that has an annual operating budget of less than $10 million per year in three of the last five fiscal years as reported to the National Transit Database (NTD) will only be required to set system-wide standards and policies. Providers of public transportation (also referred to as transit providers) with an annual operating budget of $10 million or more in three of the last five consecutive years as reported to the NTD; transit providers with an annual operating budget of less than $10 million but that receive $3 million or more in New Starts, Small Starts or other discretionary capital funds; and transit providers that have been placed in this category at the discretion of the Director of the Office of Civil Rights in consultation with the FTA Administrator, will be required to set system-wide standards and policies, collect and report demographic data, conduct service and fare equity analyses, and monitor their transit service.

Approximately 97% of public transportation passengers ride on transit systems with annual operating budgets of $10 million or more. This threshold ensures that small transit providers, whether in a large city or a rural area, are not subject to the more comprehensive reporting requirements, while larger providers, regardless of geographic location, will be subject to the comprehensive reporting requirements. The proposed change in threshold will cause some transit providers who previously were not required to collect and report demographic data, conduct service and fare equity analyses, and monitor their transit service, to begin to do so. It will also allow some small transit providers in large urbanized areas who were collecting and reporting data, conducting service and fare equity analyses, and monitoring their transit service to stop doing so once the revised Circular takes effect. We selected $3 million in discretionary transit capital grants as the second threshold for comprehensive reporting as that would be a significant amount of funds for a transit provider with an annual operating budget of less than $10 million, and would justify the increased reporting requirement. Finally, we propose to allow the Director of the Office of Civil Rights, in consultation with the FTA Administrator, to require a recipient to submit a more comprehensive Title VI Program, as when a small transit provider has a one-time or ongoing issue, likely related to a complaint or otherwise compliance-related.

We propose that the annual operating budget is inclusive of all funds, whether Federal, State, local or other, and will be based on NTD data, recognizing that NTD data has an approximate two-year lag in producing final data. Therefore, we propose ''looking back'' to fiscal years 2006–2010 to determine whether a transit provider meets the $10 million or more annual operating budget in three of the last five fiscal years as of the effective date of the Circular. In the **Federal Register** notice announcing the availability of the final Circular, we intend to provide a list of recipients that do not meet the current threshold of providing service in large urbanized areas but that will meet this new threshold. FTA proposes that transit providers who have not been required to set system-wide standards and policies, collect and report data, conduct service and fare equity analyses, and monitor their transit service under the existing FTA Circular 4702.1A, would be required to conduct service and fare equity analyses for major changes in transportation service or fare changes between the effective date of the Circular and their next Title VI Program submission. In addition, these transit providers would be required to update their current Title VI Programs to include service standards and policies, demographic and other data, including data related to monitoring their service. After the final Circular effective date, FTA will contact transit providers that are subject to these requirements for the

first time and provide technical assistance, as needed. FTA will provide an appropriate amount of time for these providers to submit the updated program. Beginning in FY 2015, FTA will publish, in its annual apportionment notice, new transit providers that meet the threshold, as well as transit providers that no longer meet the threshold. FTA seeks comment on this new threshold, and when it should take effect.

We propose that small transit providers—those with annual operating budgets of less than $10 million—will be required to set system-wide standards and policies, and include these standards and policies in their Title VI Programs. This is a new requirement. We expect that most transit providers already have standards and policies for areas such as vehicle load, vehicle assignment, transit amenities, *etc.,* and that reporting them in the Title VI Program would not be burdensome.

Transit providers with total annual operating budgets of $10 million or more or that otherwise meet the threshold described above will need to include in their Title VI Programs all of the following: their system-wide standards and policies; a demographic analysis of the transit provider's passengers; data regarding customer demographics and travel patterns; results of the provider's monitoring program; a description of the public engagement process for setting the major service change policy and disparate impact policy; results of any equity analyses conducted since the last Title VI Program submission; and a copy of board meeting minutes or a resolution demonstrating the board's consideration and awareness of any equity analyses completed.

We propose revising the description of the existing requirement to set system-wide service standards and policies. First, as in other areas, we have included the relevant text of DOT's Title VI regulations to more clearly link the regulation with the requirement in the Circular. We propose removing the ''transit security'' policy, as a transit provider's security policy may be impacted by considerable outside factors that are not within the control of the transit provider. We propose blending the requirements in one section that covers both standards and policies, rather than listing them separately. The standards and policies for vehicle load, vehicle headway, on-time performance, service availability, transit amenities and vehicle assignment remain substantially the same. In the existing Circular, FTA recommends that recipients report on these standards and policies, and allows recipients to report on other standards and policies. In contrast to the existing Circular, we propose recipients will be required to report on these specific standards and policies, rather than selecting different measures on which to report. However, in practice, this is not a significant change, since most transit providers report on these standards and policies, and do not select other standards or policies on which to report.

The existing Circular allows transit providers to choose among options for demographic data collection, service monitoring, and service and fare equity analyses. These options were added during the last revision of the Circular in 2007, to ''reduce administrative burdens by giving recipients and subrecipients greater flexibility to meet requirements through procedures that best match their resources needs, and standard practices.'' (72 FR 18732, 18735, Apr. 13, 2007). In reality, providing options, including the option to develop a local alternative, has created confusion and inconsistency. Therefore, we propose removing the options and providing one method of compliance for each of these areas. By eliminating options we make it clear to recipients what is required for compliance, and we streamline the Title VI Program review process. FTA seeks comment on this proposal.

The requirement to collect and report demographic data applies only to transit providers with an annual operating budget of $10 million or more or that otherwise meet the threshold as stated above. The existing Circular allows three different options for collecting and reporting demographic data: Option A is developing demographic and service profile maps and charts; Option B is conducting customer surveys; and Option C is a locally developed alternative. We propose eliminating the locally developed alternative and requiring both options A and B, but with a simplified and streamlined customer survey data requirement. In the existing Circular, transit providers are required to collect data on travel time, number of transfers, overall cost of the trip, as well as how people rate the quality of service. We propose instead that transit providers collect data on travel patterns, such as trip purpose and frequency of use.

The requirement to monitor transit service applies only to transit providers with an annual operating budget of $10 million or more or that otherwise meet the threshold as stated above. The existing Circular allows four different options for monitoring service: Option A is a level of service methodology; Option B is a quality of service methodology; Option C is an analysis of customer surveys, and Option D is a locally developed alternative. We propose removing the options and having one means of complying with the requirement to monitor transit service—a slightly modified Option A as the sole means of compliance, as most transit providers currently choose Option A and this Option provides sufficient information to ensure service is being provided in a nondiscriminatory manner. The one addition to this method of monitoring is an evaluation of policies related to transit amenities. As in the existing Circular, transit providers must monitor their transit service against the system-wide standards and policies set by the transit provider. At a minimum, such monitoring will occur every three years and the transit provider will submit the results as part of its Title VI Program. Prior to submitting the information to FTA, we propose that transit providers will be required to brief their board of directors or appropriate governing entity regarding the results of the monitoring program, and include a copy of the board meeting minutes, resolution, or other appropriate documentation demonstrating the board's consideration of the monitoring program.

The requirement to perform service and fare equity analyses applies only to transit providers with an annual operating budget of $10 million or more or that otherwise meet the threshold stated above. The existing Circular allows two options for evaluating service and fare changes: Option A, which outlines a specific procedure, and Option B, a locally developed alternative. We propose removing the option for a locally developed alternative and having one means of complying with the requirement to perform service and fare equity analyses. The proposed process for evaluating service and fare changes is more rigorous than what is required in the existing Circular. We propose that each transit provider to which this section applies will: Describe in its service equity analysis its policy for a major service change; describe how the public was engaged in the development of the major service change policy; describe the datasets the provider will use in the service change analysis; prepare maps; analyze the effects of proposed service changes; and analyze the effects of proposed fare changes. In addition, as in the existing Circular, the transit provider will assess the alternatives available for people affected

by the fare increase or decrease or major service change, including reductions or increases in service. Finally, the transit provider will determine if the proposals would have the effect of disproportionately excluding or adversely affecting people on the basis of race, color, or national origin, or would have a disproportionately high and adverse effect on minority or low-income riders.

Finally, this chapter states when a transit provider will be required to perform a fare and service analyses for New Starts, Small Starts, and other new fixed guideway capital projects: prior to entering into a Full Funding Grant Agreement or Project Construction Grant Agreement, and updated immediately prior to start of revenue operations.

FTA seeks comment on the content and format of Chapter IV.

E. Chapter V—Requirements for States

This chapter addresses requirements for States that administer FTA programs. As in the existing Circular, States must submit a Title VI Program. This chapter clarifies that States are responsible for including in their Title VI Program the information required from all recipients in Chapter III, and that States providing public transportation are responsible for the reporting requirements for providers of public transportation in Chapter IV. For clarity, we have included as required elements in the Title VI Program all of the elements under the ''Planning'' section in the existing Circular, as well as the elements listed for the Title VI Program in the existing Circular. We also propose cross-referencing information related to Title VI that FTA and FHWA jointly assess and evaluate during the planning certification reviews. As in the existing Circular, States are responsible for monitoring their subrecipients, whether those are planning subrecipients or transit provider subrecipients. The description of this requirement has been removed from the State requirements chapter, and placed in Chapter III since it applies to all primary recipients. As in Chapter III, we propose removing the ''eliminating redundancy'' subsection in the existing Circular, as we have determined that recipients must include all required information in each Title VI Program submission. FTA seeks comment on the content and format of Chapter V.

F. Chapter VI—Requirements for Metropolitan Planning Organizations

The proposed chapter VI equates to the chapter VII in the existing Circular. While MPOs are required, in the existing Circular, to submit a Title VI Program, the chapter is not clear that the information listed is supposed to be included in the Title VI Program, along with the requirements for all recipients. Therefore, we have included the specific requirements that MPOs shall include in their Title VI Programs. Since an MPO may fulfill several roles, including planning entity, designated recipient, direct recipient of FTA funds, and a primary recipient that passes funds through to subrecipients, we have clarified the Title VI reporting requirements for each of these roles. We also propose cross-referencing information related to Title VI that FTA and FHWA jointly assess and evaluate during the planning certification reviews. Finally, since the MPO may have subrecipients, we include the same requirement that applies to States in the existing Circular: that the MPO prepare and maintain information regarding how it passes funds through to subrecipients in a nondiscriminatory manner. FTA seeks comment on the content and format of Chapter VI.

G. Chapter VII—Effecting Compliance With DOT Title VI Regulations

This chapter is Chapter X in the existing Circular. FTA believes it makes sense from a flow and format point of view to move this chapter up, followed by compliance reviews in Chapter VIII and complaints in Chapter IX. This chapter largely tracks the DOT Title VI regulation at 49 CFR 21.13 and 21.15. The only substantive change to this chapter is the addition of the language from 49 CFR 21.13(c) and (d): termination or refusal to grant or to continue to grant Federal financial assistance; and other means authorized by law. FTA seeks comment on the content and format of this chapter.

H. Chapter VIII—Compliance Reviews

Chapter VIII, Compliance Reviews, is substantially similar to the existing Chapter VII of the same name. We propose removing from the list of criteria, ''the length of time since the last compliance review,'' as in practice FTA has not used this criterion. As in other chapters, we use the word ''recipient'' to include subrecipients. In Section 6, we propose removing the opportunity for recipients to review and comment on a draft compliance review. This is consistent with changes we are making in other civil rights processes. We proposed removing the compliance review flow chart, as it is unnecessary once the process is streamlined. FTA seeks comment on the content and format of this chapter.

I. Chapter IX—Complaints

The proposed Chapter IX contains most of the same content that is in the existing Chapter IX. We propose removing the ''letter of resolution'' in Section 4 as it is duplicative of the ''letter of finding'' issued when a recipient is found to be noncompliant with the DOT Title VI regulations. We also propose removing the appeals process, as it is not required by the regulation and removing it will assist with more efficient administration of the Title VI Program. We have added information relating to when a complaint will be administratively closed. FTA seeks comment on the content of this chapter.

J. Appendices

The proposed appendices are intended as tools to assist recipients in their compliance efforts. We propose adding nearly 40 pages of appendices in order to provide more clarity and examples of what should be included in a Title VI Program and the type of analysis that recipients should conduct. To begin, in Appendix A we propose using checklists for the elements recipients must include in their Title VI Programs instead of tables. Recipients can literally ''check the box'' as they assemble the elements of their Title VI Program.

Appendices B, C and D contain sample procedures and forms that recipients may use as provided, or that they may modify. Appendix B contains a sample Title VI Notice to the public. Appendix C contains a sample Title VI complaint procedure, and Appendix D contains a sample Title VI Complaint Form. All of these documents are ''vital documents'' for LEP purposes, and each appendix provides information about providing the information in other languages as appropriate.

Appendix E provides a sample form recipients may use for tracking transit-related Title VI investigations, lawsuits and complaints. Appendix F contains a sample table depicting the racial breakdown of the membership of various non-elected decisionmaking bodies.

Appendix G contains samples for reporting service standards (vehicle load, vehicle headway, on-time performance, service availability) and Appendix H contains samples for reporting service policies (vehicle assignment and transit amenities). For the service standards for vehicle load and vehicle headway, we have provided two methods of expressing the standard: in writing and in table format. Recipients should provide both the

written description and the table when they submit the information in their Title VI Program. The service standards for on-time performance and service available, as well as the service policies, require a written explanation only.

Appendix I provides sample demographic and service profile maps and charts. Appendix J provides information on reporting the requirement to monitor transit service. The appendix provides tables and maps as examples of how to assess the performance of service on minority and non-minority transit routes for each of the recipient's service standards and service policies. In addition, this appendix provides a sample methodology to determine the minority and/or low-income populations served by each bus and rail line and provides a framework for comparison. The appendix provides sample tables and written explanations for each of the service standards and policies. These tables are examples of what recipients should submit with their Title VI Programs. Unless requested to verify the information, FTA does not need the raw data generated through the monitoring process.

Appendix K provides checklists for a major service change policy, the analysis, the considerations for a service equity analysis, and considerations for a fare equity analysis. Use of these checklists will assist transit providers in ensuring they have met the requirements of analyzing major service changes and fare changes.

Appendix L provides information on the various types of recipients and the reporting requirements for each type of recipient. There are five flow charts that provide a pictorial representation of the reporting requirements. Appendix M is Chapter VI of the EJ Circular: Understanding the Similarities and Differences Between Title VI and Environmental Justice. Finally, Appendix N contains the same content as Appendix D in the current Circular. This appendix provides technical assistance resources for Title VI and Limited English Proficiency.

FTA seeks comment on the appendices and seeks suggestions for other resources that should be included.

Issued in Washington, DC this 26th day of September, 2011.

Peter Rogoff,

Administrator.

[FR Doc. 2011–25122 Filed 9–28–11; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, 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) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on June 24, 2011 [76 FR 37189].

DATES: Comments must be submitted on or before October 31, 2011.

FOR FURTHER INFORMATION CONTACT: Andrea Noel, National Highway Traffic Safety Administration, Office of Defects Investigation, 202–493–0210, 1200 New Jersey Avenue, SE., W48–221, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Consumer Complaint

OMB Number: 2127–0042.

Type of Request: Extension of a currently approved collection.

Affected Public: Individuals and households

Abstract

Under 49 U.S.C. 30166(e), NHTSA reasonably may require a manufacturer of a motor vehicle or motor vehicle equipment to keep records, and a manufacturer, distributor, or dealer to make reports, to enable (NHTSA) to decide whether the manufacturer, distributor or dealer has complied or is complying with this chapter or a regulation prescribed under this chapter.

49 U.S.C. 30118(c) requires manufacturers to notify NHTSA and owners, purchasers, and dealers if the manufacturer (1) learn that any vehicle or equipment manufactured by it contains a defect and decides in good faith that the defect relates to motor vehicle safety, or (2) decides in good faith that the vehicle or equipment does not comply with an applicable Federal motor vehicle safety standard. The only way for the agency to decide if and when a manufacturer learned of a safety-related defect or decided in good faith that some products did not comply with an applicable Federal motor vehicle safety standard is for the agency to have access to the information available to the manufacturer.

Affected Public: Business or other-for-profit, individuals or households.

Estimated Total Annual Burden: 33,590.

Estimated Number of Respondents: 869.

ADDRESSES: 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.

Issued in Washington, DC, on September 26, 2011.

Frank S. Borris,

Director, Office of Defects Investigation, Office of Enforcement.

[FR Doc. 2011–25110 Filed 9–28–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 32 (Sub-No. 104X); Docket No. AB 355 (Sub-No. 40X)]

Boston & Maine Corporation—Abandonment Exemptions—in Rockingham, NH; Springfield Terminal Railway Company—Discontinuance of Service Exemptions—in Rockingham, NH

Boston & Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) (collectively, applicants) have jointly filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* for B&M to abandon and ST to discontinue service over approximately 10 miles of railroad

known as the Hampton Branch in Rockingham County, NH. The rail line extends from milepost 0.00 to milepost 10.0, and includes the cities of Portsmouth, Greenland, Rye, North Hampton, and Hampton. The Line traverses United States Postal Service Zip Codes 03801, 03840, 03842, 03862, and 03870.

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; and (3) no formal complaint filed by a user of rail service on the line (or state or local agency acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period. Applicants have further certified that the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 29, 2011, unless stayed pending reconsideration.[1] Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 11, 2011. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 19, 2011, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representative: Robert B. Burns, 1700 Iron Horse Park, North Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

B&M has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. OEA will issue an environmental assessment (EA) by October 4, 2011. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), B&M shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by B&M's filing of a notice of consummation by September 29, 2012, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *HTTP://WWW.STB.DOT.GOV.*

Decided: September 23, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–25091 Filed 9–28–11; 8:45 am]

BILLING CODE 4915–01–P

[1] Originally, applicants indicated that the proposed consummation date was on or about October 28, 2011, but, because the verified notice was filed on September 9, 2011, the earliest this transaction may be consummated is October 29, 2011. On September 19, 2011, applicants' counsel filed a letter correcting the proposed consummation date.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 26, 2011.

The Department of Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the publication date of this notice. A copy of the submission may be obtained by calling the Bureau Information Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before October 31, 2011 to be assured of consideration.

Community Development Financial Instutitions (CDFI) Fund

OMB Number: 1559–0028.

Type of Review: Revision of a currently approved collection.

Title: The Community Development Financial Institutions Program—Certification Application.

Abstract: The certification application will be used to determine whether an entity seeking CDFI certification or recertification meets the Fund's requirements for such certification as set forth in 12 CFR 1805.201.

Estimated Total Annual Burden Hours: 11,250.

CDFI Fund Clearance Officer: Charles McGee, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 205, Washington, DC 20005; (202) 622–8453

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–25112 Filed 9–28–11; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request for Supplemental Quarterly Report (Small Business Lending Fund, SBLF)

AGENCY: Office of Domestic Finance, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Domestic Finance within the Department of the Treasury is soliciting comments concerning requirements for banks participating in the Small Business Lending Fund to report information about the level and type of loans they are making to small businesses on a quarterly basis.

DATES: Written comments must be received on or before November 28, 2011 to be assured of consideration.

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

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

Fax: Attn: Request for Comments (SBLF Quarterly Supplemental Reports) (202) 622–8722

Mail: Attn: Request for Comments (SBLF Quarterly Supplemental Reports). Office of Domestic Finance, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220

Instructions: All submissions received must include the agency name and the **Federal Register** Doc. number that appears at the end of this document. Comments received will be made available to the public via regulations.gov or upon request, without change and including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to Manager (Communications, Research and External Affairs), Small Business Lending Fund, Office of Domestic Finance, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: Requirement to report quarterly data on Small Business Lending.

OMB Number: 1505–0228.

Abstract: Once accepted into the SBLF program, a bank is required to submit a Supplemental Report each quarter. The Supplemental Report serves two purposes.

First, the Quarterly Supplemental Report is used to determine the bank's small business lending baseline. The baseline is the bank's historical amount of small business lending for the period October 2009 to September 2010. The program considers a bank's increases in small business lending against this historical baseline. In addition, a bank's initial dividend rate is based on the increase in small business lending (over this baseline) in the quarters since October 2010.

Second, every quarter thereafter, the bank files a Supplemental Report quarterly so that Treasury can assess the change in the small business lending for the previous quarter. That change from the historical baseline is used to set the dividend rate for the next quarter.

Type of Review: Extension of a currently approved collection.

Affected Public: Banks and lending institutions that were approved by Treasury to participate in the Small Business Lending Fund.

Estimated Number of Respondents: 350.

Estimated Annual Responses: 1,400.

Estimated Hours per Response: 4 hours.

Estimated Total Annual Burden Hours: 5,600 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget (''OMB'') control number. Books or records relating to a collection of information must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the 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; (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, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–25040 Filed 9–28–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collections; Comment Request

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

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before November 28, 2011.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–453–2686 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 × 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–453–1039, ext. 165.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or

continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms:

Title: Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid to the United States.

OMB Control Number: 1513–0008.

TTB Form Number: 5170.7.

Abstract: TTB F 5170.7 is used to document the shipment of taxpaid-Puerto Rican liquors or articles into the U.S. The form is verified by Puerto Rican and U.S. Treasury officials to certify that products are either taxpaid or deferred under appropriate bond. This serves as a method of protection of the revenue.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden Hours: 100.

Title: Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

OMB Number: 1513–0037.

TTB Form Number: 5100.11.

Abstract: TTB F 5100.11 is completed by exporters to report the withdrawal of spirits, denatured spirits, and wines from internal revenue bonded premises, without payment of tax for direct exportation; or transfer to a foreign trade zone, customs manufacturer's bonded warehouse, or customs bonded warehouse; or for use as supplies on vessels or aircraft.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 300.

Estimated Total Annual Burden Hours: 6,000.

Title: Application for Operating Permit Under 26 U.S.C. 5171(d).

OMB Number: 1513–0040.

TTB Form Number: 5110.25.

Abstract: TTB F 5110.25 is completed by proprietors of distilled spirits plants who engage in certain specified types of activities (such as warehousing bulk distilled spirits for non-industrial use without bottling). TTB personnel use the information on the form to identify the applicant, the location of the business, and the types of activities to be conducted.

Current Actions: We are submitting this information collection as a revision. Changes in this supporting statement reflect changes to section numbers as recodified in the final rule for the revision of 27 CFR Part 19, Distilled Spirits Plants. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 80.

Estimated Total Annual Burden Hours: 20.

Title: Application and Permit To Ship Puerto Rican Spirits to the United States Without Payment of Tax.

OMB Control Number: 1513–0043.

TTB Form Number: 5110.31.

Abstract: TTB F 5110.31 is used to allow a person to ship spirits in bulk into the U.S. The form identifies the person in Puerto Rico from where shipments are to be made, the person in the U.S. receiving the spirits, amounts of spirits to be shipped, and the bond of the U.S. person to cover taxes on such spirits.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden Hours: 750.

Dated: September 26, 2011.

Angela M. Jeffries,

Deputy Director, Regulations and Rulings Division.

[FR Doc. 2011–25145 Filed 9–28–11; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Proposed Collection of Information: Annual Letters—Certificates of Authority (A) and Admitted Reinsurer (B)

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the ''Annual Letters—Certificates of Authority (A) and Admitted Reinsurer (B).''

DATES: Written comments should be received on or before November 28, 2011.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Program Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Rose Miller, Surety Bond Branch, 3700 East West Highway, Room 632F, Hyattsville, MD 20782, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial

Management Service solicits comments on the collection of information described below:

Title: Annual Letters—Certificates of Authority (A) and Admitted Reinsurer (B).

OMB Number: 1510–0057.

Form Number: None.

Abstract: This letter is used to collect information from companies to determine their acceptability and solvency to write or reinsure federal surety bonds.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 347.

Estimated Time per Respondent: 39.75 hours.

Estimated Total Annual Burden Hours: 13.793.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: September 22, 2011.

Charles Simpson,

Acting Assistant Commissioner (CFO), Management.

[FR Doc. 2011–24877 Filed 9–28–11; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination; Minnesota Surety and Trust Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 1 to the Treasury Department Circular 570; 2011 Revision, published July 1, 2011, at 76 FR 38892.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to Minnesota Surety and Trust Company (NAIC#30996) under 31 U.S.C. 9305 to qualify as an acceptable surety on Federal bonds is terminated effective today. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2011 Revision, to reflect this change.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: September 15, 2011.

Laura Carrico,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 2011–24876 Filed 9–28–11; 8:45 am]

BILLING CODE 4810–35–M



FEDERAL REGISTER

Vol. 76 Thursday,

No. 189 September 29, 2011

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Annual Catch Limits and Accountability Measures; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100902424–1331–03]

RIN 0648–BA23

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Annual Catch Limits and Accountability Measures

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

ACTION: Final rule.

SUMMARY: NMFS hereby implements an omnibus amendment to all Mid-Atlantic Fishery Management Council (Council) fishery management plans (FMPs) to bring all Council FMPs into compliance with the annual catch limit (ACL) and accountability measure (AM) requirements of the Magnuson-Stevens Act (MSA). This rule is necessary to establish measures that address the MSA-required elements to utilize scientific advice, establish catch limits, and maintain accountability in managing fisheries. There are multiple objectives of the Omnibus Amendment: To establish a comprehensive framework for all Council FMPs that is compliant with the MSA requirements and consistent with the National Standard 1 guidelines issued by NMFS; to implement a process that more formally utilizes scientific recommendations in the establishment of annual catch levels; to establish a framework to derive ACLs with AM backstops; and to establish processes for revisiting and modifying the measures established by the Omnibus Amendment so that overfishing is prevented, stocks are rebuilt as needed, and optimum yield (OY) may be achieved for all managed stocks under the Council's jurisdiction.

DATES: Effective October 31, 2011.

ADDRESSES: Copies of the Omnibus Amendment document, including the Environmental Assessment and Regulatory Impact Review (EA/RIR) and other supporting documents for the Omnibus Amendment, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The Omnibus Amendment is also accessible via the Internet at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, (978) 281–9104.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a Notice of Availability (NOA) soliciting public input on the Omnibus Amendment in the **Federal Register** on May 23, 2011 (76 FR 29717). NMFS published a proposed rule in the **Federal Register** on June 17, 2011 (76 FR 35578), proposing regulations that would implement the Omnibus Amendment measures. The NOA specifically solicited input on whether NMFS, acting on the behalf of the Secretary of Commerce (Secretary), should approve, partially approve, or disapprove the Omnibus Amendment. Comments were accepted through July 22, 2011, on the NOA. The proposed rule outlined the Acceptable Biological Catch (ABC) control rules for use by the Scientific and Statistical Committee (SSC) in recommending ABC to the Council, a risk policy for use in conjunction with the ABC control rules to inform the SSC of the Council's preferred tolerance for the risk of overfishing a stock, ACLs for all Council-managed stocks except *Loligo* and *Illex* squids, which are exempt from the ACL/AM requirements because they are not overfished and have annual life cycles, comprehensive AMs for all established ACLs, descriptions of the process to review ACL and AM performance, and information on the processes for the future modification of the measures established through the Omnibus Amendment. Comments were accepted on the proposed rule measures through July 18, 2011. Additional background information and detail on why and how the Omnibus Amendment was developed and the overarching requirements the amendment satisfies were provided in the Omnibus Amendment proposed rule (76 FR 35578, June 17, 2011) and are not repeated here.

The Council reviewed the proposed Omnibus Amendment regulations as drafted by NMFS and deemed them to be necessary and appropriate as required by section 303(c) of the MSA. The Omnibus Amendment established the measures described later in this final rule through the following specific FMP amendments: Amendment 13 to the Atlantic Mackerel, Squids, and Butterfish FMP; Amendment 3 to the Atlantic Bluefish FMP; Amendment 2 to the Spiny Dogfish FMP; Amendment 15 to the Summer Flounder, Scup, and Black Sea Bass FMP; Amendment 16 to the Surfclam and Ocean Quahog FMP; and Amendment 3 to the Tilefish FMP.

Approved Omnibus Amendment Measures

NMFS evaluated all comments received by the end of the comment periods, whether specifically directed to the amendment approval decision or the proposed rule measures, in its decisionmaking process. NMFS, on behalf of the Secretary, approved the Omnibus Amendment on August 12, 2011. NMFS now implements through this final rule, the Omnibus Amendment measures recommended by the Council and as contained in the proposed rule, with minor clarifications as outlined in the Changes and Clarifications from the Proposed Rule section later in this preamble. As outlined in the proposed rule and Omnibus Amendment document, this action establishes the framework that the Council and SSC will utilize to establish catch limits, the system for maintaining accountability when ACLs are exceeded, the process to evaluate the continued efficacy of the overall ABC/ACL/AM system, and the methods by which future changes to the overall system may be made. The actual ABC recommendations by the SSC and establishment of ACLs by the Council will occur in subsequent specification setting processes. The approved Omnibus Amendment measures are as follows:

ABC Control Rules

This rule implements the four ABC control rule approaches developed by the Council's SSC, as proposed. The framework of these rules places stocks into one of four levels, each with specific criteria for both placement and generation of ABC recommendations, based on the amount of scientific uncertainty as determined by the SSC involved with the stock assessment, available data, life history, and other scientifically related parameters. When possible, the SSC will utilize the overfishing level (OFL) probability distribution in conjunction with the Council's risk policy to derive and recommend ABC to the Council. In instances where OFL cannot be determined, or for stocks that the SSC determines have an unreliable OFL or OFL distribution, the control rules guide the SSC in how ABC shall be derived.

Council Risk Policy

This rule implements the risk policy approaches, as proposed. The Council's risk policy is designed to inform the SSC of the Council's tolerance for the

risk of overfishing. The risk policy uses a combination of the ratio of biomass (B)/$B_{Maximum\ Sustainable\ Yield\ (MSY)}$ and the life history traits of any given species to set the tolerance for overfishing anywhere from zero (for stocks with a B/B_{MSY} of 0.10 or lower, irrespective of life history traits) to a maximum of a 40-percent probability of overfishing for stocks with a typical life history as determined by the SSC and a B/B_{MSY} of 1.0 or higher.

The probability of overfishing, as determined by the risk policy, will be applied by the SSC to stocks with either an OFL distribution from the stock assessment or generated by the SSC. If no OFL is available from a stock assessment and no OFL proxy is provided by the SSC when an ABC recommendation is made, the risk policy does not permit increases in ABC until an acceptable OFL has been identified.

For stocks under a rebuilding plan, the risk policy requires that the probability of exceeding the rebuilding target F ($F_{REBUILD}$) would be 50 percent, unless modified to a lesser value (*i.e.,* a higher probability that $F_{REBUILD}$ would not be exceeded) through a stock rebuilding plan amendment. In instances where the rebuilding plan risk policy and general risk policy result in different approaches and potential ABCs, the SSC will forward the lower of the two resulting ABCs to the Council as a more risk averse approach.

Annual Catch Limits and Accountability Measures

This final rule implements the ACL and AM measures, as proposed, along with the minor changes outlined in the Changes from the Proposed Rule Section later in this preamble. Under the implemented approach established by the Omnibus Amendment, the Council will rely on the SSC to set ABC at or below OFL, with the reduction from OFL dependent on the amount of scientific uncertainty identified by the SSC. Where applicable, Canadian catch estimates will be removed from the overall ABC to establish a domestic ABC for U.S. catch. The Council will recommend to NMFS ACLs set equal to ABC for all species, with some further subdivision to sector-level ACLs where stocks have pre-existing allocations for both commercial and recreational fisheries. The sum of these sector ACLs will equal the ABC. Annual Catch Targets (ACTs) will be used to address management uncertainty. Council staff or species-specific monitoring committees will review available information and recommend to the Council the amount of reduction from ACL to ACT necessary to address management uncertainty. Where ACLs are divided into sector-specific ACLs, comparable sector ACTs that address the associated sector-specific management uncertainties will be used. Finally, estimated discards (*i.e.,* dead discarded catch) will be removed from ACTs to yield either commercial or recreational landing targets, as applicable. In summary, the structure for all Council FMPs is: OFL ≥ ABC = ACL(s) ≥ ACT(s), with scientific uncertainty addressed at the ABC level by the SSC as an offset from OFL, and management uncertainty addressed by the Council following recommendations from Council staff or species-specific monitoring committees at the ACT level as an offset from the ABC/ACL level.

Existing proactive accountability measures, including commercial trip and possession limits, commercial fishery closure authority, and commercial fishery overage repayments are being retained and codified as AMs through the Omnibus Amendment. In addition, new AMs are established to close recreational fisheries when data in hand indicate ACLs have been met or exceeded, as well as establishing lb-for-lb repayment of any catch above established ACLs for all fisheries. Recreational ACLs will be evaluated on a 3-yr rolling average comparison of ACLs to 3-yr average catch. The Omnibus Amendment also provides for adjustments to future ACTs when the causes of ACL overages are not related to landings (*i.e.,* dead discards, a combination of landings and discards, or other sources of stock mortality that may be tracked and subsequently quantified).

Review and Future Modification of Omnibus Amendment Measures

The Omnibus Amendment establishes that ACL and AM performance reviews will occur at least every 5 yr if ACLs are not routinely exceeded. Consistent with the NS1 guidelines, if the ACL is exceeded for any species with a frequency greater than 25 percent of the time (*i.e.,* more than 1 in 4 yr, or in any 2 consecutive years), the Omnibus Amendment requires the Council to initiate a review of the ACL, ACT, and AM approaches used.

The Omnibus Amendment implements the comprehensive listing of items that may be modified through the Council's specification or framework adjustment processes, as proposed.

Comments and Responses

NMFS received 11 combined comments on the May 23, 2011 (76 FR 29717), NOA requesting input on the Secretary's amendment approval decision and the Omnibus Amendment proposed rule (76 FR 35578; June 17, 2011). Comments were submitted by private citizens, a recreational party/charter vessel operator, a commercial fish processing plant operator, a commercial fisheries advocacy group, and the following nongovernmental organizations (NGOs): Environmental Defense Fund; Pew Environmental Group; Marine Fish Conservation Network; National Coalition for Marine Conservation; and Oceana. Some of the comments did not provide input on the amendment approval decision, nor did they address the proposed measures; thus no response to these comments is provided here. Where possible, responses to similar comments on the amendment approval decision and proposed measures have been consolidated.

Comment 1: One NGO commented that the Council and NMFS appeared to exempt *Loligo* and *Illex* squids from all the required provisions of the MSA and NS1 guidelines. Specifically, the commenter stated that ABC must be established for both squid species using the ABC control rules and Council risk policy.

Response: The Omnibus Amendment only exempts *Loligo* and *Illex* squid from the ACL and AM components of the amendment; all other NS1 guideline requirements apply to these two species. Both the Omnibus Amendment document and the proposed rule state that *Loligo* and *Illex* squid are exempt from the ACL and AM requirements. Neither document provides any additional exemptions from the NS1 guidelines for these species. The Omnibus Amendment approach for both squids is wholly consistent with the annual life cycle exemption found in the note to section 303 of the MSA and the NS1 guidelines at § 600.300(h)(2) and, as such, they are exempt from ACL and AM requirements, but must have status determination criteria, MSY, OY, ABC, and ABC control rules as part of their FMP. As both species already have these required elements in their FMP, NMFS is implementing the Omnibus Amendment as proposed.

Comment 2: One NGO raised concerns about the process to modify the ABC control rules and risk policy established by the Omnibus Amendment. The commenter asserted that these two components of the Omnibus Amendment could be modified through the Council's specification process. Specific concerns were raised that the specification process could inappropriately be used to modify the ABC control rules and/or

risk policy, which could minimize public participation and analysis of alternatives. The commenters stated that the Omnibus Amendment must be disapproved until such time that the potential adjustment processes are clarified by the Council.

Response: NMFS disagrees that the Omnibus Amendment should be disapproved, as these concerns are unfounded. The Omnibus Amendment and its implementing regulations do not authorize the Council to make such changes through the specification process. Minor adjustments, within a narrowly defined scope, are permitted as outlined in each species-specific framework adjustment process regulation. For all other changes, the Council would be required to utilize an FMP amendment process.

Comment 3: One NGO stated that the preferred Omnibus Amendment risk policy (Alternative G, a two-tiered approach based on species life history) provides too great a risk of overfishing and should be disapproved in favor of one of the other proposed risk alternatives (Alternative D, a four-tiered approach considering stock status, replenishment threshold, and productivity, as well as an approach for the maximum permissible risk of overfishing allowed at a B/B_{MSY} inflection point higher than 1.0). In addition, the commenter expressed concern about the vague life history criteria in the two-tiered Alternative G approach that will be used to distinguish typical and atypical species. The commenter also asserted that the risk policy is largely superfluous, as many of the Council stocks will not have the necessary OFL probability distributions needed to apply the risk policy in a meaningful way. These comments on the risk policy were suggested as grounds upon which NMFS should disapprove the Omnibus Amendment (*i.e.,* allegations that the risk policy will not prevent overfishing.)

Response: NMFS disagrees that the amendment should be disapproved and also disagrees that one risk policy alternative must be substituted over another. NMFS has approved and is implementing the Council-preferred risk alternative (Alternative G). NMFS considers that the risk policy, in conjunction with the comprehensive system for deriving ABC and establishing ACL(s) and ACT(s), will provide a sufficiently high probability that overfishing will not occur.

The risk policy under Alternative G establishes a maximum permissible risk of overfishing stocks. For a stock that has a B/B_{MSY} ratio over 1.0 and has a typical life history, a maximum 40-percent probability of overfishing or, alternatively expressed as a 60-percent probability that overfishing will not occur, is permitted. This probability is 10 percent lower than the precedent established for rebuilding probability of success, wherein a 50-percent probability of not exceeding the $F_{REBUILD}$ target was established for summer flounder (see *NRDC* v. *Daley*). The maximum probability of overfishing for a SSC-determined atypical life history species is 35 percent, which is a 65-percent probability that overfishing will not occur. The NS1 guidelines indicate that the risk tolerance for overfishing a stock is an important component of the ABC control rule and derivation process; however, it is not a requirement that must be specified in an FMP. The NS1 guidelines make clear that a minimum threshold of a 50-percent probability of overfishing is required; thus, NMFS would only have grounds to disapprove the Council's risk policy approach if it permitted a higher probability that overfishing would occur.

All the risk policy alternatives were developed through a comprehensive, collaborative effort of the Council's SSC and the Council. The alternative implemented in the final rule provides a useful and appropriate system to inform the SSC of the Council's tolerance for the risk of overfishing. It is a more robust approach than selecting a fixed percentage, and is more restrictive than the minimum requirement, and sets a maximum probability thereby providing some flexibility to consider current information and circumstances when setting catch levels. NMFS acknowledges that the risk policy is only applicable for stocks assigned to ABC control rule levels 1–3 when an acceptable OFL probability is provided as an assessment output or can be generated by the SSC for level 3 stocks. NMFS also acknowledges that the expert judgment of the SSC will play a critical role in deriving ABC for stocks for which no OFL exists or for which OFL is not viewed as adequate. These stocks will either have the default control rule applied (75 percent of the F_{MSY} rate for level 3 stocks) or will have thoroughly documented, more conservative approaches designed to ensure overfishing does not occur (level 4 stocks). Additionally, deference is given to the SSC to make determinations as to which Council-managed species have typical or atypical life histories. In all the aforementioned scenarios wherein the SSC may utilize judgment, the process will occur in open meetings and will include documentation and justification for the decisions reached. This is not inconsistent with the approach contemplated under NS1. The SSC recently applied the risk policy in developing ABC recommendations for the summer flounder, scup, and bluefish stocks. NMFS disagrees that the risk policy is a ''paper exercise,'' as the SSC has begun using both the ABC control rules and risk policy.

Comment 4: Some commenters expressed concern that the ABC control rule for deriving ABC for stocks categorized as level 3 and 4, and the conditions for when the SSC might deviate from the ABC control rule framework, are too vague. Some of these comments recommended disapproving the amendment until such time that more information and criteria were added to how ABC would be derived for level 3 and 4 stocks and rules established for when the SSC could deviate from the ABC control rule framework.

Response: NMFS disagrees. NS1 guidelines contemplate and authorize SSCs to deviate from ABC control rule calculations, but require the SSC to provide an explanation of why an alternative ABC is more appropriate (§ 600.310(f)(3)). Because the authority to deviate from ABCs calculated using the control rules is explicitly provided under the NS1 guidelines, there was no need to include the generic description of this possibility in the Omnibus Amendment and proposed rule; however, a brief description was included, designed to echo the language of § 600.310(f)(3), for better transparency of the process. In fact, given the language in the NS1 guidelines, the SSC may deviate from any ABC control rule level at any time, provided it can satisfactorily explain why the deviation was necessary and how the alternative methods used are the best approach.

In addition, the level 3 and 4 control rule approaches provide a meaningful framework for the SSC to evaluate the quality of assessment information and uncertainty in deriving an ABC recommendation for the Council. The SSC is expected to conduct its ABC recommendation process in an open, transparent public forum and to provide detailed documentation for the Council and public that provides the information considered, the approaches taken, and why the ABC recommended is consistent with the best available scientific information, to satisfy National Standard 2 requirements. For these reasons, the level 3 and 4 ABC control rules and the description process for recommending alternatively derived ABCs are sufficient to approve the Omnibus Amendment. NMFS

expects that the ABC control rule provides a sufficiently robust approach that utilizes the best available scientific information, and that the ABC recommendations from the SSC will provide a low risk of overfishing any given stock, irrespective of that stock's level assignment. There remain some stock assessments that are limited by the available data and/or understanding of species status. The four-level ABC control rule framework is designed to encourage scientific examination so that stocks may be advanced to levels indicative of more robust understanding. The proposed rule did not repeat that the ABC control rules are a spectrum from least uncertain to most uncertain for levels 1 to 4; this description is in the Omnibus Amendment.

Comment 5: Several commenters with recreational fishing interests stated that no recreational ACL overages should be required to pay back lb-for-lb the overage amount through AMs until such time that the Marine Recreational Information Program (MRIP) is operational.

Response: NMFS expects the MRIP system for estimating recreational catches to be available for the first year of ACL performance evaluation (*i.e.,* the 2012 FY).

Comment 6: One commenter raised concern that the Omnibus Amendment's planned 5-year review of ABC control rules and ACL performance is too long. The commenter was concerned about lost yield if ACLs and ACTs are set ''too conservatively,'' stating that the only opportunity to potentially see less conservative approaches applied may not occur until the 5-yr review.

Response: The Omnibus Amendment affords flexibility for the Council to re-examine the performance of any of the measures at any time it deems such a review appropriate. The selection of a planned 5-year detailed performance review was deliberately selected to ensure that ABC, ACL, and ACT setting approaches and subsequent performance will be formally reviewed by the Council on a fixed schedule; however, this does not preclude additional review on a more frequent basis. In addition, the Omnibus Amendment requires a thorough performance review should an ACL be exceeded more than once in a 4-year period, or if an ACL is exceeded in 2 consecutive years. These latter criteria for review may well occur if ACLs have been set ''too conservatively,'' as suggested by the commenter. Were no period expressed for the formal review, the Council would not be obligated to perform any performance review unless the more than 1-in-4 or 2-consecutive-year ACL overages occurred. The SSC has been reviewing the establishment process and the performance of ABC recommendations annually. It is expected that the level of review involved with the first few years of operation under the ACL management system will require more intensive examination of performance, until such time that the system becomes more stable.

Comment 7: One commenter stated that the potential economic impacts of the Omnibus Amendment implemented frameworks should have been prepared by the Council and NMFS. Specifically, the commenter called on NMFS and the Council to prepare a more thorough analysis of potential changes in yield, by species, and the resultant potential economic impacts.

Response: NMFS disagrees. The Omnibus Amendment outlines a framework for how catch levels will be established consistent with NS1 requirements and, as such, does not provide information on actual catch levels, by species, the application of risk tolerances, or scientific or management uncertainties. The Council's approach, supported by NMFS, has been that the application of the Omnibus Amendment's framework for setting ABC, ACLs, and ACTs will be fully evaluated as individual species specification processes occur in 2011 for the 2012 FY. These evaluations will provide economic impact analysis of the ABCs, ACLs, ACTs, and other Omnibus Amendment elements, specific to the measures being proposed.

Comment 8: One commenter requested clarification on whether the decision to close fisheries will be made based on exceeding the ACL, ACT, or other levels within the Omnibus Amendment framework. The commenter also asked for clarification on why commercial and recreational sector landing-based closure evaluations are different.

Response: Closures are tied to the established commercial fishing quotas and recreational harvest limits (for fisheries with recreational sectors) under the Omnibus Amendment. Landings will be monitored during the fishing seasons and proactive AMs utilized to close the respective sectors when landing limits are reached. The commercial closure approaches vary from species to species, but generally the level of commercial landings are monitored in-season on a weekly or daily basis, based on dealer-reported data, and the commercial fishery may be closed when landings projections indicate that the established level will be reached or exceeded. Some commercial fisheries also have possession or trip limit reductions that occur when specified amounts of landings are reached. For example, the scup Winter I season possession limit is reduced when 80 percent of the Winter I landing limit is reached. Many of these commercial fishery management systems previously existed and were adopted as proactive AMs in the Omnibus Amendment.

Recreational fisheries landings will also be monitored during the fishing season, but because recreational data are available much less frequently (*i.e.,* updates provided in 2-month waves, delivered some 6 weeks after the end of the wave period), the Omnibus Amendment establishes that recreational fishery closures will occur only when data in hand indicate a landing level has already been reached or exceeded. This is to help mitigate the uncertainty that occurs in trying to project recreational landings. The authority to close recreational fisheries based on landings evaluations is a new component adopted in the Omnibus Amendment.

There is not currently the ability to monitor dead discards in season for the purposes of inseason monitoring and potential closure. There will be a post-fishing year accounting to determine dead discards and, in combination with the final landings data, an evaluation of ACL and ACT performance. If in the future, the ability to monitor total catch becomes available on a real-time basis, the Council may consider modifying an FMP to specify when closures will be enacted at either the ACT or ACL level.

Comment 9: One commenter stated that Atlantic mackerel and spiny dogfish ABCs should not be reduced to account for Canadian catch.

Response: These stocks are managed on a stock-wide basis, including the portion of the stock distributed in Canadian waters. The specification setting process for the two species currently accounts for Canadian catch on the stock prior to establishing catch levels. The Omnibus Amendment established an approach wherein this stock-wide management is preserved and, because the MSA is inapplicable within Canadian jurisdiction, removes the estimated Canadian catch before establishing a domestic ABC, ACL, and ACT for the U.S. portion of the fishery. NMFS agrees that this is a logical approach and accomplishes management of the stocks throughout their range, which is a biologically sound approach.

Comment 10: Some commenters alleged that NMFS failed to ensure that

the Omnibus Amendment's EA provided alternatives to the proposed action, and that an Environmental Impact Statement (EIS) should have been required for the Omnibus Amendment. The commenters cited several instances wherein they alleged that additional reasonable and/or feasible alternatives should have been developed and instances where they believe the analyses were incomplete or otherwise insufficient. Alleged instances of insufficient alternatives include an alleged failure to consider additional approaches for dealing with Canadian catch in the Atlantic mackerel and spiny dogfish fisheries, lack of additional alternatives beyond setting ACL = ABC, with emphasis that ACL < ABC should have been developed as an alternative for consideration and analysis, an alleged failure to provide sufficient measures to ensure accountability, including insufficient alternatives for proactive AMs besides ACT. Most of the comments on inadequate analyses centered on alleged insufficient description of the fisheries, species captured, and consideration of stocks in the fishery.

Response: Consistent with NEPA, Council for Environmental Quality (CEQ) regulations, and NOAA administrative policy, the Council and NMFS collaborated to prepare an EA to evaluate the significance of the environmental impacts expected as a result of the actions proposed in the Omnibus Amendment. The results of this assessment are provided in section 7.0 of the EA signed by NMFS on July, 28, 2011. The FONSI concludes that because the Omnibus Amendment will merely be formalizing the process of addressing scientific uncertainty and management uncertainty when setting catch limits with a comprehensive system of accountability for catch for each of the managed resources that the impacts of the considered alternatives are administrative in nature. Thus because the measures contained in the Omnibus Amendment largely build on measures already contained in the FMP, which have been in place for many years, NMFS does not expect that the new actions taken in the Omnibus Amendment will have any significant impacts. The commenters provided no evidence, nor even any claims, that the conclusions in the FONSI are not supported by the evidence provided in the EA for this finding.

According to the CEQ regulations, and guidance on the subject, an EIS need only be prepared when an EA or other related analysis identifies significant effects on the environment or if the facts available to the action agency cannot support the conclusions required in order to make a FONSI. The EA associated with the Omnibus Amendment evaluated the expected direct, indirect, and cumulative impacts likely to result from implementation of the proposed action. The EA, in both form and scope, followed all agency guidelines for an EA associated with an FMP amendment. Had a FONSI determination not been supportable, based on the analyses, then an EIS would have been prepared, consistent with the process outlined in CEQ regulations. Future FMP actions that make use of the Omnibus Amendment processes to establish fishing quotas will evaluate the impacts of those actions as part of the specification setting process.

The Omnibus Amendment considered a reasonable range of alternatives for the decisions made. The EA clearly lays out the alternatives considered for each decision point and explains the reasoning behind the development of those alternatives, and for the ultimate decision between those alternatives. Additionally, Appendix A to the EA provides a discussion of the alternatives that were initially developed, but not given further consideration because they were determined to be either infeasible or insufficient.

The response to comment 9 provides additional information on why NMFS considers the Omnibus Amendment approach for addressing Canadian catch of Atlantic mackerel and spiny dogfish to be acceptable. The response to comment 11 outlines NMFS' response that additional treatment of species captured in target fisheries, and designation of non-target stocks and ecosystem components was not required.

NMFS has determined that the Council's analysis in setting ABCs, ACLs, and AMs was consistent with the NS1 guidelines and met the requirements of NEPA. The NS1 guidelines instruct that in order to prevent overfishing and achieve, on a continuing basis, OY all sources of uncertainty—both scientific and management uncertainty—must be addressed. Scientific uncertainty should be addressed in reducing the ABC from the ACL and management uncertainty can either be addressed in reducing the ACL from the ABC, or through the use of AMs, including ACTs. The purpose of utilizing an ACT is so that, given uncertainty in the amount of catch that will result from the conservation and management measures in the fishery, the ACL will not be exceeded.

The Council acted consistently with these guidelines in deciding to set ACL=ABC for all managed species and to address management uncertainty by setting ACTs. Commenters argue that the decision to set ACL=ABC precludes the Council for considering OY factors when setting the ACL and for that reason that the Council was required to consider alternatives that set the ACL at a level less than the ABC. The response to comment 12 below further explains the Council's approach for considering OY factors. Because the Council, consistent with the NS1 guidelines, chose to address those OY factors that are not considered in setting ABC when setting the ACT, there was no need to consider setting the ACL at a level lower than the ABC; such an alternative would have been superfluous.

Moreover, the Council fully complied with NEPA in developing a reasonable range of alternatives for the processes of setting ABCs, ACLs, and AMs (including ACTs). Where it was feasible, the Council developed multiple proactive and reactive accountability measures designed to prevent the ACLs from being exceeded. Notably while one commenter argues that more proactive accountability measures were required to be considered, the commenter does not point to any specific measures that were overlooked by the Council. The Council considered all reasonable and feasible alternatives, consistent with NEPA.

Comment 11: Many of the NGOs alleged that the Omnibus Amendment fails to adequately analyze non-target species captured by fisheries for Mid-Atlantic FMP species and does not adequately consider all fisheries requiring conservation and management. These commenters indicated that the Omnibus Amendment should be disapproved and additional analyses conducted to indicate all species captured in Mid-Atlantic fisheries, reclassification of stocks as target, non-target, stocks in the fishery, and ecosystem components, as needed. One commenter indicated that this information is contained in existing Standardized Bycatch Reporting Methodology (SBRM) reports and should have been used by the Council in the Omnibus Amendment development. Further comments on this topic stated that the Omnibus Amendment should be disapproved because it fails to establish appropriate sub-ACLs for FMP-managed species captured incidentally in Council-managed target fisheries. One commenter stated, as an example, that swordfish captured in the squid trawl

fishery should be managed through a sub-ACL.

Response: NMFS disagrees with these interpretations of the NS1 guidelines and disagrees that the Omnibus Amendment's approach to stocks in the fishery, incidentally captured species, and sub-ACLs is deficient and must be disapproved. Section 302(h) of the MSA authorizes each Council to prepare and submit a fishery management plan and amendments for ''each fishery under its authority that requires conservation and management.'' The NS1 guidelines provide that, by default, species managed under FMPs are considered to be stocks in the fishery. 50 CFR 600.310(d). The NS1 guidelines do not require Councils to change which species are or are not included in FMPs, nor do the NS1 guidelines require FMPs to incorporate ecosystem component species classifications. Councils may, but are not required to, use an ''ecosystem component species'' classification. 50 CFR 600.310(c)–(d). Thus, Councils have had, and continue to have under the MSA and NS1 Guidelines, considerable discretion to define the managed ''fishery.''

Consistent with the MSA and the NS1 Guidelines, the Council determined that the stocks managed under its FMPs should all continue to be considered stocks in the fishery, exercised its discretion not to add other species in the fishery, and decided against pursuing potential ecosystem component species classification. While the NS1 guidelines explain that a Council should determine which target and non-target species to include in a fishery, the guidelines do not require FMPs to list species in target and non-target species ''classifications.'' *See* 50 CFR 600.310(d). The main point of classifying stocks is distinguishing between ''stocks in the fishery'' versus the ecosystem component species category. *See* 50 CFR 600.310(c)–(d). The MSA also does not require classification into target and non-target classifications. Section 303(a)(2) of the MSA merely requires that an FMP contain a description of the species of fish involved in the fishery; this is not a new requirement, nor is that requirement modified by the NS1 guidelines. The Mid-Atlantic FMPs have, since their inception, approval, and implementation, contained these required descriptions. Amendments to the FMPs, including the Omnibus Amendment, update these listings. The Omnibus Amendment's affected environment incorporates, by reference, detailed analyses of species involved in each fishery. NMFS supports the Council's approach in the Omnibus Amendment. The level of analyses requested by these collective comments would be wholly appropriate if the Council had elected to add new stocks to the fishery or include them as ecosystem component species. As the Council did not, the level of fishery information provided is sufficient and not grounds for disapproving the amendment.

The designation of sub-ACLs is not required by the MSA or NS1 Guidelines. Although sub-ACLs are utilized in some fisheries in other regions, the Council decided that sub-ACLs were neither reasonable or practical here, given the current constraints on fishery monitoring for Mid-Atlantic stocks. All managed species catch, regardless of whether the FMP is a Mid-Atlantic, South Atlantic, New England, or Secretarial FMP, is fully accounted for under the respective ACLs, irrespective of whether the catch is directed landings, dead discards in the directed fishery, or dead discards incurred while targeting other species. With regard to swordfish, the Secretary of Commerce, and not the Councils, directly manages the fishery under an Atlantic Highly Migratory Species FMP. 16 U.S.C. 1854(g). That Secretarial FMP accounts for the total catch of swordfish, including that which occurs in the squid fishery both as authorized retention for sale and as dead discards (if any). The NS1 guidelines do not require the Secretary and the Council to establish a swordfish sub-ACL in the Atlantic Mackerel, Squids, and Butterfish FMP.

Comment 12: Several NGOs commented that NMFS should disapprove or partially disapprove the Omnibus Amendment until approaches to OY are revised by the Council consistent with the NS1 Guidelines. Specifically, these commenters asserted that the Omnibus Amendment must include OY evaluations for all Council-managed species, with specific determination of where OY lies within the overall ABC/ACL/ACT framework for each species. These commenters stated that more specificity must be included in the process descriptions for how ACL or ACTs may be adjusted for OY considerations (*i.e.,* relevant economic, social, or ecological factors), and provide that ACL should be reduced from ABC for OY considerations. In addition, one commenter said it would not be appropriate for OY considerations to be applied at the ACT level, as it is a target, not a limit. Another commenter indicated that specification of OY is missing from several Mid-Atlantic FMP implementing regulations.

Response: The Omnibus Amendment's approach to OY is consistent with the MSA and the NS1 guidelines. National Standard 1 of the MSA requires that a fishery management plan or amendment prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. 16 U.S.C. 1851(a)(1). The MSA defines ''optimum'' with respect to yield from a fishery as being prescribed on the basis of maximum sustainable yield from the fishery, as reduced by relevant economic, social or ecological factor. 16 U.S.C. 1802(33). The Omnibus Amendment amends existing FMPs to address new annual catch limit and other requirements, but retains the FMPs' existing, previously-approved processes for specifying and assessing OY. The Council's FMPs all contain a process for assessing, specifying, identifying, and adjusting OY, as needed, based on relevant economic, social, and ecological factors for each species. The reauthorized MSA did not change National Standard 1 or the definition of OY, and the basic approach to OY is unchanged in the NS1 guidelines. Thus, there is no need to revise the OY processes in the Omnibus Amendment.

The NS1 Guidelines provide that OY can be described at a fishery, stock complex, or stock level and the OY specification process must be included in FMPs or amendments. 50 CFR 600.310(c), (e)(3). While the Councils have codified OY identification approaches for some individual stocks, for other stocks, the Councils address OY at the fishery level, consistent with what is required under the MSA and allowed under the NS1 guidelines. Providing a clear description of OY considerations is an important part of the specification process, and the existing FMPs provide such descriptions.

Because the reauthorized MSA added ACLs and ABC, the NS1 guidelines were revised to clarify the relationships between MSY, OY, ABC, and ACL(s), and these relationships were also discussed in the Omnibus Amendment (p. 27–28). The guidelines state that achieving OY on a continuing basis means producing a long-term series of catches such that the average catch is equal to OY and other conservation objectives of the MSA are met. 50 CFR 600.310(e)(3)(i)(B). The guidelines further state that an FMP must contain measures, including ACLs and AMs, to achieve OY on a continuing basis. However, the MSA and guidelines do not require that OY considerations be addressed when developing ACLs. A

Council may set an ACL lower than ABC to take into account factors related to preventing overfishing or achieving OY, or it may set the ACL equal to ABC and take these additional factors into account when establishing ACTs. See final NS1 guidelines, 74 FR 3178, 3189 (explaining OY, ABC, ACT, ACL relationships in response 33).

Here, the Omnibus Amendment takes the latter approach. The Omnibus Amendment rightly describes OY as the long-term average desired yield from a fishery; OY is not, and should not be confused with, an annual catch limit. Yield to a fishery and total catch are not interchangeable; it is expected that the OY level will vary over time, as scientific and management uncertainties, as well as dead discards are reduced.

NMFS disagrees that the lack of an OY process description or specific criteria for the monitoring committees' consideration to specify OY is grounds for disapproving the amendment. The Omnibus Amendment is designed to provide flexibility to the Council and their committees to adapt their practices over time and in response to changing fishery conditions while meeting its obligations under the MSA, NS1 guidelines, and their FMPs. NMFS considers that the Omnibus Amendment processes lend themselves to a transparent, participatory process that will allow the public and interested parties a mechanism to understand the concerns and issues raised by these commenters with respect to OY.

Comment 13: One NGO stated that the Omnibus Amendment lacks required ACT control rules and that the process for how management uncertainty will be addressed is deficient, as it lacks a clearly articulated policy. For these reasons, the commenter states the amendment must be disapproved and these components revised.

Response: NMFS disagrees. The Council directed the monitoring committees and staff to set ACTs on a sector-specific basis so that the ACTs would accurately reflect the interannual and intrannual variability in the sources of management uncertainty that vary by sector. ACTs are not required under the NS1 guidelines but are discretionary provisions that can be used as proactive AMs. Similarly, ACT control rules are not required to be specified in the FMP by either the MSA or the NS1 guidelines. The lack of a single over-arching formulaic control rule does not weaken the Omnibus Amendment's approaches for addressing management uncertainty through a descriptive process. The sector-specific committees will consider all sources of management uncertainty within their respective fisheries and provide the technical basis, including any necessary control rules, along with a recommendation for the necessary ACT. NMFS finds this approach to be consistent with the NS1 guidelines that merely state that an ACT control rule may be utilized as part of the ACT-setting process. Thus, NMFS finds the Council's ACT approach wholly consistent with the NS1 guidelines' intent, and sufficient to provide the Council, through its monitoring committees, a robust mechanism for categorizing and quantifying applicable management uncertainty.

Comment 14: Several NGOs stated that the Omnibus Amendment is deficient because it does not establish sufficient bycatch and catch monitoring processes. Within these comments, one NGO stated that failure to propose more extensive catch monitoring programs violates NEPA. The commenters claim the Omnibus Amendment is fatally flawed, as a result, and must be disapproved.

Response: NMFS disagrees that the Omnibus Amendment must consider new or additional at-sea or other catch monitoring programs. NMFS also disagrees that the Omnibus Amendment's approach for assessing total catch is insufficient and does not agree that the amendment needs to be disapproved based on the grounds raised by these comments. The Omnibus Amendment considering a reasonable range of alternatives to address the monitoring needs of the fisheries. Neither the MSA nor the NS1 guidelines require real-time catch monitoring or discard controls as contemplated in the comment letters. Currently, such programs are beyond the scope of existing resources. The Omnibus Amendment did not explore these options as alternatives, as the alternatives would have been neither reasonable nor feasible.

In lieu of monitoring total catch on a real-time basis, the Omnibus Amendment contemplates a two-part examination of the fisheries: Inseason monitoring of landings (through commercial dealer reports for commercial landings and MRIP for recreational landings) and post-fishing year accounting of dead discards. The monitoring committees will consider the estimated discards for a given specification period (annual or multi-year) and recommend any necessary reductions for uncertainty associated with discard performance to the Council to establish ACT(s). The estimated discards will then be removed from the Council-adjusted ACT to set the landing level, by sector, to be monitored inseason. Following the completion of the fishing year, the final landings will be added to the re-estimated dead discards to provide total catch. If this total catch exceeds the ACL, AMs will be imposed as soon as possible, consistent with the Omnibus Amendment approach for the species in question.

NMFS acknowledges that this accounting exercise to derive total catch contains some uncertainty, particularly if the discard estimates utilized to offset the ACT or to derive the landing limits before the fishery occurs are variable. However, this is largely why the Council elected to utilize ACTs, so that the likelihood of exceeding ACLs if changes in discard estimates occur could be mitigated. This process is consistent with NS1 guidance. While the Omnibus Amendment establishes a strong process to ensure the likelihood of exceeding ACLs is infrequent by requiring consideration of both scientific and management uncertainty, there are AMs that will be imposed if this does occur, a formal process for examining performance if ACLs are frequently exceeded, and no requirement that catch be set so that ACL is never exceeded. How robust discard estimates are also influences scientific uncertainty as imprecise fishery-related mortality can alter the perception of fishing mortality and stock size.

NMFS considers that the process for catch accounting will be iterative as management under ACLs occurs over the next few years. The process may well require adjustments, and the descriptive nature of the Omnibus Amendment processes is such that the Council and NMFS have some flexibility to make modifications that improve the process and management such that advancements are realized and overfishing is prevented. In addition, should greater monitoring resources or systems become available, the Omnibus Amendment does not require modification to incorporate the information generated by such systems. The data could be utilized as soon as they become operational.

Comment 15: One commenter alleged that the Omnibus Amendment fails to satisfy the MSA deadline of establishing ACLs and AMs by the 2011 FY, particularly because the Omnibus Amendment establishes a process for setting catch, but does not actually provide specific limits for the 2011 FY.

Response: NMFS asserts that the implementation of the final Omnibus Amendment before the end of the 2011 FY satisfies the MSA requirement.

Comment 16: One commenter stated that the Omnibus Amendment must be disapproved because ACT will not leave a margin for management uncertainty and that ACTs are inadequate because they do not have AMs.

Response: NMFS disagrees. The use of ACTs in the Omnibus Amendment is wholly consistent with NS1 guidelines. The NS1 guidelines do not require that ACL be set lower than ABC, nor that ACT be used. ACTs are not required in the MSA, but only ACLs and appropriate AMs. The Secretary may assume that, if OFL = ABC = ACL = ACT, overfishing will not be prevented, but the Council's process will likely include some reductions at either the OFL to ABC level for scientific uncertainty, at the ACL to ACT level for management uncertainty, or both. This provides a strong system to prevent overfishing, consistent with the NS1 guidelines.

Under the Omnibus Amendment measures, the Council is expected to reduce catch from the ACL to the ACT to account for management uncertainty. In years when an ACT is exceeded but the ACL is not, the management buffer may be adjusted in subsequent years, but no AMs in the form of lb-for-lb payback of the ACT overage are required. If the ACL is exceeded in any year, AMs will be invoked as described in the Omnibus Amendment for the FMP and species in question. There is no requirement that lb-for-lb overage repayment AMs be triggered if ACTs are exceeded. However, there are AMs operative within the ACT as there will be closures when commercial and recreational landing limits are reached. As such, ACTs will be used as proactive measures, to reduce the likelihood that ACLs will be exceeded. The ACT is, in fact, itself an AM (§ 600.310(f)(2)(v)).

Comment 17: One NGO stated that the Omnibus Amendment must be disapproved because NMFS's proposed AM measures are not an accurate reflection of the Council's intent. The commenters alleged that recreational sector fishery lb-for-lb overage repayments must occur in the year following the overage.

Response: The commenter may have misinterpreted the description of the overage repayment system. The operation of the overage repayment system is clarified here and is consistent with the Council's intent.

NMFS attempted to explain, in the proposed rule, that the data for both commercial and recreational landings and discards will not likely be available immediately following the FY conclusion. For example, when ACLs are set for the 2013 FY, the final commercial and recreational landings and discard information is not expected to be available until after the first quarter of 2014. Given that the specification process for 2014 will begin in mid-2013 and culminate in rulemaking for January 1 implementation the last quarter of 2013, it will not be possible to make adjustments for any ACL overage when the initial 2014 specifications are established.

The Omnibus Amendment retains the existing commercial overage repayments that were in place prior to the development of ACLs. NMFS routinely makes adjustments to specifications for known commercial overages and will continue to do so in the Omnibus Amendment process. Using the prior example, if known commercial overages are available by October 31, 2013, NMFS can adjust the 2014 commercial specifications accordingly through rulemaking. Then, in late 2014, the totality of the 2013 commercial FY data will be examined to ensure that any additional overages or adjustments resulting from incorporation of final commercial landings information, if needed, will be performed for the 2015 commercial specifications. The system is configured so double counting does not occur, but, as the example illustrates, it is possible that commercial overage repayment AMs may occur 1 full year removed from the FY in which they occurred. As stated before, this is not new. Under the Omnibus Amendment, there will also be an examination of commercial catch data (*i.e.,* landings + dead discards). This process may function similarly to the example or, using the example timeframe, may occur in 2014 for application to the 2015 FY for a 2013 catch overage of the ACL (*i.e.,* dead discard caused overage of the ACL).

Recreational fisheries have not been managed in a system analogous to the commercial example provided above. Landings data are not available in as timely a fashion as commercial data. Using the example years previously discussed, NMFS may only be able to evaluate 2013 recreational landings through June 2013 during the 2014 specification rulemaking process. While it is possible that a recreational overage may have occurred by that date, historic data indicate such an occurrence should be rare. As a result, NMFS may not be able to make informed examination of 2013 recreational overages until after the first quarter in 2014. NMFS may make adjustments to the recreational harvest limit when this information becomes available, through the recreational management measures rulemaking, typically conducted in the first and second quarters. However, if the final data are not available until later in 2014, if there is no ongoing regulatory mechanism to adjust the recreational harvest limit and recreational measures concurrently or for other as of yet unforeseen reasons, NMFS may have to wait to adjust the 2015 FY recreational sector ACL during 2014 for an overage accrued in the 2013 recreational fishery.

The Omnibus Amendment provides the flexibility in describing how AMs will function so that NMFS can ensure that any necessary adjustments will occur consistent with the data necessary to evaluate ACL performance. It is expected that these data systems and delivery timing may improve in the future. Should this be the case, the Omnibus Amendment provides flexibility for NMFS to modify the AM repayment process, as needed, without needing to amend the ACL process. NMFS considers that this system will function best if ACL overages are avoided by well-established sector ACLs, mitigating the need to trigger AMs all together. See response to comment 18 for additional information.

Comment 18: One NGO commented that the description of the AM process indicates that adjustments, through overage repayments, will be made through the Council's specification process. The commenter states that the Omnibus Amendment must be disapproved for this reason, asserting that AMs must be automatic and non-discretionary.

Response: This is an apparent misunderstanding by the commenter. As explained in the response to Comment 17, NMFS, not the Council, will make automatic lb-for-lb overage repayments for ACL overages through the specification rulemaking. The AMs are automatic and do not involve discretion on either NMFS's or the Council's part. For this reason, the AMs implemented by the Omnibus Amendment are consistent with the NS1 guidelines.

Comment 19: One commenter stated that the Omnibus Amendment must be disapproved because it does not consider catch outside its jurisdiction. The example cited was summer flounder, a Council-managed species, which is captured and landed in the Atlantic sea scallop fishery, managed by the New England Fishery Management Council. The commenter alleged that the Omnibus Amendment fails to consider catch from all sources and, thus, must be disapproved. The commenter also indicated that the Omnibus Amendment failed to adequately examine alternatives for sub-ACLs in examples such as the one

provided. In so doing, the commenter alleged that the Omnibus Amendment violates NEPA.

Response: NMFS disagrees with the contention that the Omnibus Amendment's approach for addressing total catch is fatally flawed. All federally managed fish landed for commercial sale within the region, irrespective of whether the fish are captured in a Council-managed fishery or in a fishery managed by another Council or the Secretary, will be counted toward the total annual landings for that species. This method of accounting is not new, and will continue under the Omnibus Amendment. Similarly, all dead discards of a species such as summer flounder will be attributed to the total catch estimation of summer flounder. Thus, the Omnibus Amendment's system of catch accounting does, in fact, consider catch from all directed fishery and other sources. The NS1 guidelines do not require the establishment of sub-ACLs for species captured incidentally in other directed fisheries. See response to comment 11 for additional information.

Comment 20: One commenter alleged that the decisions made to implement the Omnibus Amendment are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law and, as such, are a violation of the Administrative Procedure Act (APA) and must be set aside as unlawful. The commenter did not provide specific information in support of their general assertion that the APA had been violated by implementing the Omnibus Amendment.

Response: NMFS disagrees. The Omnibus Amendments measures are in accordance with the requirements of NS1 guidelines and the MSA and, as such, are not arbitrary. The Omnibus Amendment measures were not impulsively derived or implemented; instead, a lengthy, transparent process was utilized by the Council, its committees, and the Fishery Management Action Team (FMAT) tasked with developing alternatives and measures. NMFS undertook all required elements of announcing the amendment and proposed rule availability for review and comment and is responding, in full, to all relevant comments provided on the amendment and proposed measures. Neither the Council nor NMFS has abused discretion in following the required development and implementation processes required for the amendment. NMFS is confident that the APA has not been violated in any manner and the Omnibus Amendment is being implemented consistent with applicable laws.

Changes and Clarifications From the Proposed Rule

Atlantic bluefish. The process for deriving ACT and Total Allowable Landings (TAL) was clarified. The proposed rule correctly outlined the process required to derive ACT and TAL from the recommended ABC; however, additional language on where the commercial and recreational allocation shall be addressed was added for a more clear description. These changes are consistent with both the proposed rule and the Omnibus Amendment.

Atlantic mackerel. As was noted in the Omnibus Amendment proposed rule, the Council took final action on Amendment 11 to the Atlantic Mackerel, Squids, and Butterfish FMP (Amendment 11) in October 2010 and NMFS published an Amendment 11 NOA and proposed rule on August 1, 2011 (76 FR 45742). While the proposed rule for Amendment 11 does contain a proposed recreational fishery allocation for mackerel, the final approval decision and final rule for Amendment 11 measures will occur after the final Omnibus Amendment measures in this rule are effective. Therefore, the final Omnibus Amendment measures reflect the various Atlantic mackerel measures designed to function without a formal recreational allocation. If the final Amendment 11 measures, when approved, contain the recreational allocation for Atlantic mackerel, the final rule to implement Amendment 11 measures will also modify Omnibus Amendment measures, as needed.

Butterfish. In the interim between deeming the proposed Omnibus Amendment regulations and this final rule, the Council initiated the process to develop 2012 specifications for the Atlantic Mackerel, Squids, and Butterfish FMP. During this process, the Council discovered that the method for deriving the butterfish cap in the *Loligo* fishery with respect to the OFL/ABC/ACT framework was not entirely clear in either the Omnibus Amendment document or the proposed regulations. The Council held discussion during its June 2011 meeting to clarify the intent of the butterfish cap to be derived as a percentage of the ACT rather than the ABC. Following this discussion, the Council provided a comment on the proposed rule to clarify how the butterfish cap should be devised under the OFL/ABC/ACT framework. NMFS agrees with the Council's clarification and is implementing, though this final rule, revisions to the butterfish regulations that are consistent with the Council-revised information.

Summer flounder. In the interim between the publication of the NOA and Omnibus Amendment proposed rule, the 2011 recreational management measures were finalized (76 FR 38387, June 30, 2011). The amendatory language with respect to summer flounder recreational management measures has been revised from the proposed rule to reflect the final 2011 recreational management measures.

Relationship of ABC to ACL. NMFS has modified several erroneous regulations for spiny dogfish, summer flounder, scup, black sea bass, Atlantic bluefish, surfclam, ocean quahog, and tilefish that indicated ACL could be set less than or equal to ABC. Several public comments were received about the Omnibus Amendment's treatment of ABC in relation to ACL, specifically if ACL could be reduced from the ABC level. The Council's Omnibus Amendment EA document contains some conflicting language on this matter, with language under the discussion of OY (page 27–8) contemplating that adjustments based on OY considerations could occur at either the ACL or ACT level; however, examination of the species-specific information contained in the document clearly articulates that ACL will be set equal to ABC. The final regulations issued by this rule correctly indicate that ABC=ACL for all species. Additional discussion of OY occurs in the Comment and Responses section of this preamble.

Additional Editorial and Corrective Changes. Minor changes in language not affecting the content or intent of the regulations have been made between the proposed and final rules. These changes are designed to improve readability, grammar, and punctuation; maintain consistency between FMPs; and generally improve the final implementing regulations.

Classification

The Administrator, Northeast Region, NMFS, determined that the Omnibus Amendment to the Atlantic Mackerel, Squids, and Butterfish, Atlantic Bluefish; Spiny Dogfish; Summer Flounder, Scup, and Black Sea Bass; the Surfclam and Ocean Quahog; and the Tilefish FMPs is necessary for the conservation and management of the Atlantic mackerel, butterfish; Atlantic bluefish, spiny dogfish, summer flounder, scup, black sea bass, surfclam, ocean quahog, and the tilefish fisheries and that it is consistent with the MSA and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 20, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

§ 648.13 [Amended]

■ 2a. Section 648.13(i)(2)(iii) is amended by removing ''§ 648.123(a)(2), (3), and (4)'' and adding ''§ 648.125(a)(2), (3), and (4)'' in its place.

■ 2b. Section 648.14 is amended as follows:

■ a. Paragraph (o)(1)(vi) is amended by removing ''§§ 648.122 and 648.123(a)'' and adding ''§§ 648.124 and 648.125(a)'' in its place.

■ b. Paragraph (u)(2)(vi) is amended by removing ''§ 648.291(d)(3) or § 648.291'' and adding ''§ 648.294(d)(3) or § 648.295'' in its place.

■ c. Paragraph (u)(2)(vii) is added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(u) * * *

(2) * * *

(vii) Land or possess tilefish in or from the Tilefish Management Unit, on a vessel issued a valid tilefish permit under this part, after the incidental fishery is closed pursuant to § 648.245(b), unless fishing under a valid tilefish IFQ allocation permit as specified in § 648.249(a), or engaged in recreational fishing.

* * * * *

■ 3. Section 648.20 is revised to read as follows:

§ 648.20 Mid-Atlantic Fishery Management Council ABC control rules.

The SSC shall review the following criteria, and any additional relevant information, to assign managed stocks to a specific control rule level when developing ABC recommendations. The SSC shall review the ABC control rule level assignment for stocks each time an ABC is recommended. The ABC may be recommended for up to 3 years for all stocks, with the exception of 5 years for spiny dogfish. The SSC may deviate from the control rule methods or level criteria and recommend an ABC that differs from the result of the ABC control rule calculation; however, any such deviation must include the following: A description of why the deviation is warranted, description of the methods used to derive the alternative ABC, and an explanation of how the deviation is consistent with National Standard 2.

(a) *Level 1 criteria.* (1) Assignment of a stock to Level 1 requires the SSC to determine the following:

(i) All important sources of scientific uncertainty are captured in the stock assessment model;

(ii) The probability distribution of the OFL is calculated within the stock assessment and provides an adequate description of the OFL uncertainty;

(iii) The stock assessment model structure and treatment of the data prior to use in the model includes relevant details of the biology of the stock, fisheries that exploit the stock, and data collection methods;

(iv) The stock assessment provides the following estimates: Fishing mortality rate (F) at MSY or an alternate maximum fishing mortality threshold (MFMT) to define OFL, biomass, biological reference points, stock status, OFL, and the respective uncertainties associated with each value; and

(v) No substantial retrospective patterns exist in the stock assessment estimates of fishing mortality, biomass, and recruitment.

(2) *Level 1 ABC determination.* Stocks assigned to Level 1 by the SSC will have the ABC derived by applying acceptable probability of overfishing from the MAFMC's risk policy found in § 648.21(a) through (d) to the probability distribution of the OFL.

(b) *Level 2 criteria.* (1) Assignment of a stock to Level 2 requires the SSC to determine the following:

(i) Key features of the stock biology, the fisheries that exploit it, and/or the data collection methods for stock information are missing from the stock assessment;

(ii) The stock assessment provides reference points (which may be proxies), stock status, and uncertainties associated with each; however, the uncertainty is not fully promulgated through the stock assessment model and/or some important sources of uncertainty may be lacking;

(iii) The stock assessment provides estimates of the precision of biomass, fishing mortality, and reference points; and

(iv) The accuracy of the minimum fishing mortality threshold and projected future biomass is estimated in the stock assessment using ad hoc methods.

(2) *Level 2 ABC determination.* Stocks assigned to Level 2 by the SSC will have the ABC derived by applying acceptable probability of overfishing from the MAFMC's risk policy found in § 648.21(a) through (d) to the probability distribution of the OFL.

(c) *Level 3 criteria.* (1) Assignment of a stock to Level 3 requires the SSC to determine that the stock assessment attributes are the same as those for a Level 2 assessment listed in § 648.20(d)(1) through (4), except that the stock assessment does not contain an estimated probability distribution of OFL or the stock assessment provided OFL probability distribution is judged by the SSC to not adequately reflect uncertainty in the OFL estimate.

(2) *Level 3 ABC determination.* Stocks assigned to Level 3 will have ABC derived by one of the following two methods:

(i) The SSC will derive the ABC by applying the acceptable probability of overfishing from the MAFMC's risk policy found in § 648.21(a) through (d) to an SSC-adjusted OFL probability distribution. The SSC will use default levels of uncertainty in the adjusted OFL probability distribution based on literature review and evaluation of control rule performance; or,

(ii) If the SSC cannot develop an OFL distribution, a default control rule of 75 percent of the F_{MSY} value will be applied to derive ABC.

(d) *Level 4 criteria.* (1) Assignment of a stock to Level 4 requires the SSC to determine that none of the criteria for Levels 1–3 found in § 648.20(a) through (c) were met.

(2) *Level 4 ABC determination.* Stocks assigned to Level 4 will have ABC derived using control rules developed on a case-by-case basis by the SSC based on biomass and catch history and

application of the MAFMC's risk policy found in § 648.21(a) through (d).

■ 4. Section 648.21 is revised to read as follows:

§ 648.21 Mid-Atlantic Fishery Management Council risk policy.

The risk policy shall be used by the SSC in conjunction with the ABC control rules in § 648.20(a) through (d) to ensure the MAFMC's preferred tolerance for the risk of overfishing is addressed in the ABC development and recommendation process.

(a) *Stocks under a rebuilding plan.* The probability of not exceeding the F necessary to rebuild the stock within the specified time frame (rebuilding F or $F_{REBUILD}$) must be at least 50 percent, unless the default level is modified to a higher probability for not exceeding the rebuilding F through the formal stock rebuilding plan. A higher probability of not exceeding the rebuilding F would be expressed as a value greater than 50 percent (*e.g.,* 75-percent probability of not exceeding rebuilding F, which corresponds to a 25-percent probability of exceeding rebuilding F).

(b) *Stocks not subject to a rebuilding plan.* (1) For stocks determined by the SSC to have an atypical life history, the maximum probability of overfishing as informed by the OFL distribution will be 35 percent for stocks with a ratio of biomass (B) to biomass at MSY (B_{MSY}) of 1.0 or higher (*i.e.,* the stock is at B_{MSY} or higher). The maximum probability of overfishing shall decrease linearly from the maximum value of 35 percent as the B/B_{MSY} ratio becomes less than 1.0 (*i.e.,* the stock biomass less than B_{MSY}) until the probability of overfishing becomes zero at a B/B_{MSY} ratio of 0.10. An atypical life history is generally defined as one that has greater vulnerability to exploitation and whose characteristics have not been fully addressed through the stock assessment and biological reference point development process.

(2) For stocks determined by the SSC to have a typical life history, the maximum probability of overfishing as informed by the OFL distribution will be 40 percent for stocks with a ratio of B to B_{MSY} of 1.0 or higher (*i.e.,* the stock is at B_{MSY} or higher). The maximum probability of overfishing shall decrease linearly from the maximum value of 40 percent as the B/B_{MSY} ratio becomes less 1.0 (stock biomass less than B_{MSY}) until the probability of overfishing becomes zero at a B/B_{MSY} ratio of 0.10. Stocks with typical life history are those not meeting the criteria in paragraph (b)(1) of this section.

(c) For instances in which the application of the risk policy approaches in either paragraph (b)(1) or (2) of this section using OFL distribution, as applicable given life history determination, results in a more restrictive ABC recommendation than the calculation of ABC derived from the use of $F_{REBUILD}$ at the MAFMC-specified overfishing risk level as outlined in paragraph (a) of this section, the SSC shall recommend to the MAFMC the lower of the ABC values.

(d) If an OFL cannot be determined from the stock assessment, or if a proxy is not provided by the SSC during the ABC recommendation process, ABC levels may not be increased until such time that an OFL has been identified.

■ 5. Section 648.22 is revised to read as follows:

§ 648.22 Atlantic mackerel, squid, and butterfish specifications.

(a) *Initial recommended annual specifications.* The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Squid, Mackerel, and Butterfish Committee of the MAFMC:

(1) Initial OY (IOY), including Research Set-Aside (RSA), DAH, and DAP for *Illex* squid, which, subject to annual review, may be specified for a period of up to 3 years;

(2) ACL; ACT including RSA, DAH, DAP; bycatch level of the TALFF, if any; and butterfish mortality cap for the *Loligo* fishery for butterfish; which, subject to annual review, may be specified for a period of up to 3 years;

(3) ACL; commercial ACT, including RSA, DAH, DAP; JVP if any; TALFF, if any; and recreational ACT, including RSA for mackerel; which, subject to annual review, may be specified for a period of up to 3 years. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(4) IOY, including RSA, DAH, and DAP for *Loligo* squid, which, subject to annual review, may be specified for a period of up to 3 years; and

(5) Inseason adjustment, upward or downward, to the specifications for *Loligo* squid, as specified in paragraph (e) of this section.

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the Monitoring Committee shall review the best available data to recommend specifications consistent with the following:

(1) *Loligo and/or Illex squid.* (i) The ABC for any fishing year must be either the maximum OY, or a lower amount, if stock assessments indicate that the potential yield is less than the maximum OY. The OYs specified during a fishing year may not exceed the following amounts:

(A) *Loligo*—The catch associated with a fishing mortality rate of $F_{Threshold}$.

(B) *Illex*—Catch associated with a fishing mortality rate of F_{MSY}.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of RSA and DAH. RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH will be set after deduction for RSA, if applicable.

(2) *Mackerel*—(i) *ABC.* The MAFMC's SSC shall recommend an ABC to the MAFMC, as described in § 648.20. The mackerel ABC is reduced from the OFL based on an adjustment for scientific uncertainty; the ABC must be less than or equal to the OFL.

(ii) *ACL.* The ACL or Domestic ABC is calculated using the formula ACL = ABC − C, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year.

(iii) *OY.* OY may not exceed the ACL, and must take into account the need to prevent overfishing while allowing the fishery to achieve OY on a continuing basis. OY is prescribed on the basis of MSY, as reduced by social, economic, and ecological factors.

(iv) *ACT.* The Monitoring Committee shall identify and review relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the specifications process.

(A) *Commercial sector ACT.* Commercial ACT is composed of RSA, DAH, dead discards, and TALFF. RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH, DAP, and JVP will be set after deduction for RSA, if applicable, and must be projected by reviewing data from sources specified in paragraph (b) of this section and other relevant data, including past domestic landings, projected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. Economic considerations for the establishment of JVP and TALFF include:

(*1*) Total world export potential of mackerel producing countries.

(*2*) Total world import demand of mackerel consuming countries.

(*3*) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers.

(*4*) Increased/decreased revenues to the U.S. from foreign fees.

(*5*) Increased/decreased revenues to U.S. harvesters (with/without joint ventures).

(*6*) Increased/decreased revenues to U.S. processors and exporters.

(*7*) Increases/decreases in U.S. harvesting productivity due to decreases/increases in foreign harvest.

(*8*) Increases/decreases in U.S. processing productivity.

(*9*) Potential impact of increased/decreased TALFF on foreign purchases of U.S. products and services and U.S.-caught fish, changes in trade barriers, technology transfer, and other considerations.

(B) *Recreational sector ACT.* Recreational ACT is composed of RSA, dead discards, and the Recreational Harvest Limit (RHL).

(v) *Performance review.* The Squid, Mackerel, and Butterfish Committee shall conduct a detailed review of fishery performance relative to the mackerel ACL at least every 5 years.

(A) If the ACL is exceeded with a frequency greater than 25 percent (*i.e.,* more than once in 4 years or any two consecutive years), the Squid, Mackerel, and Butterfish Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not exceeded as frequently.

(B) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that a stock has become overfished.

(C) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

(3) *Butterfish*—(i) *ABC.* The MAFMC's SSC shall recommend an ABC to the MAFMC, as described in § 648.20. The butterfish ABC is reduced from the OFL based on an adjustment for scientific uncertainty; the ABC must be less than or equal to the OFL.

(ii) *ACL.* The butterfish ACL will be set equal to the butterfish ABC.

(iii) *OY.* OY may not exceed the ACL, and must take into account the need to prevent overfishing while allowing the fishery to achieve OY on a continuing basis. OY is prescribed on the basis of MSY, as reduced by social, economic, and ecological factors.

(iv) *ACT.* The Monitoring Committee shall identify and review relevant sources of management uncertainty to recommend the butterfish ACT as part of the specifications process. The ACT is composed of RSA, DAH, dead discards, and bycatch TALFF that is equal to 0.08 percent of the allocated portion of the mackerel TALFF. RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH and bycatch TALFF will be set after deduction for RSA, if applicable.

(v) The butterfish mortality cap will be based on the ACT and allocated to the *Loligo* fishery as follows: Trimester I—65 percent; Trimester II—3.3 percent; and Trimester III—31.7 percent.

(vi) Any underages of the butterfish mortality cap for Trimesters I or II will be applied to Trimester III of the same year, and any overages of the butterfish mortality cap for Trimesters I and II will be applied to Trimester III of the same year.

(vii) *Performance review.* The Squid, Mackerel, and Butterfish Committee shall conduct a detailed review of fishery performance relative to the butterfish ACL in conjunction with review for the mackerel fishery, as outlined in this section.

(c) *Recommended measures.* Based on the review of the data described in paragraph (b) of this section and requests for research quota as described in paragraph (g) of this section, the Monitoring Committee will recommend to the Squid, Mackerel, and Butterfish Committee the measures from the following list that it determines are necessary to ensure that the specifications are not exceeded:

(1) RSA set from a range of 0 to 3 percent of:

(i) The IOY for *Loligo* and/or *Illex.*

(ii) The commercial and/or recreational ACT for mackerel.

(iii) The ACT for butterfish.

(2) Commercial quotas, set after reductions for research quotas.

(3) The amount of *Loligo, Illex,* and butterfish that may be retained, possessed, and landed by vessels issued the incidental catch permit specified in § 648.4(a)(5)(ii).

(4) Commercial minimum fish sizes.

(5) Commercial trip limits.

(6) Commercial seasonal quotas/closures for *Loligo* and *Illex.*

(7) Minimum mesh sizes.

(8) Commercial gear restrictions.

(9) Recreational harvest limit, set after reductions for research quotas.

(10) Recreational minimum fish size.

(11) Recreational possession limits.

(12) Recreational season.

(13) Changes, as appropriate, to the Northeast Region SBRM, including the coefficient of variation (CV) based performance standard, fishery stratification, and/or reports.

(14) Modification of existing accountability measures (AMs) utilized by the Monitoring Committee.

(d) *Annual fishing measures.* (1) The Squid, Mackerel, and Butterfish Committee will review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee must recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the ACL will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will review the recommendations and will publish a proposed rule in the **Federal Register** proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations will be available for inspection at the office of the Regional Administrator during the public comment period. If the annual specifications for squid, mackerel, and butterfish are not published in the **Federal Register** prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be superceded as of the effective date of the final rule implementing the current year's annual specifications.

(2) The Regional Administrator will make a final determination concerning the specifications for each species and any measures necessary to assure that the specifications will not be exceeded. After the Regional Administrator considers all relevant data and any

public comments, notification of the final specifications and any measures necessary to assure that the specifications will not be exceeded and responses to the public comments will be published in the **Federal Register**. If the final specification amounts differ from those recommended by the MAFMC, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section.

(e) *Inseason adjustments.* The specifications established pursuant to this section may be adjusted by the Regional Administrator, in consultation with the MAFMC, during the fishing year by publishing notification in the **Federal Register**.

(f) *Distribution of annual Loligo squid commercial quota.* (1) A commercial quota for *Loligo* squid will be allocated annually into trimester periods, based on the following percentages: Trimester I (January–April)—43.0 percent; Trimester II (May–August)—17.0 percent; and Trimester III (September–December)—40.0 percent.

(2) Any underages of commercial period quota for Trimester I that are greater than 25 percent of the Trimester I quota will be reallocated to Trimesters II and III of the same year. The reallocation of quota from Trimester I to Trimester II is limited, such that the Trimester II quota may only be increased by 50 percent; the remaining portion of the underage will be reallocated to Trimester III. Any underages of commercial period quota for Trimester I that are less than 25 percent of the Trimester I quota will be applied to Trimester III of the same year. Any overages of commercial quota for Trimesters I and II will be subtracted from Trimester III of the same year.

(g) *Research set-aside (RSA) quota.* Prior to the MAFMC's quota-setting meetings:

(1) NMFS will publish a Request for Proposals (RFP) in the **Federal Register**, consistent with procedures and requirements established by the NOAA Grants Office, to solicit proposals from industry for the upcoming fishing year, based on research priorities identified by the MAFMC.

(2) NMFS will convene a review panel, including the MAFMC's Comprehensive Management Committee and technical experts, to review proposals submitted in response to the RFP.

(i) Each panel member will recommend which research proposals should be authorized to utilize research quota, based on the selection criteria described in the RFP.

(ii) The NEFSC Director and the NOAA Grants Office will consider each panel member's recommendation, and provide final approval of the projects. The Regional Administrator may, when appropriate, exempt selected vessel(s) from regulations specified in each of the respective FMPs through written notification to the project proponent.

(3) The grant awards approved under the RFPs will be for the upcoming fishing year. Proposals to fund research that would start prior to, or that would end after the fishing year, will not be eligible for consideration. All research and/or compensation trips must be completed within the fishing year for which the research grant was awarded.

(4) Research projects will be conducted in accordance with provisions approved and provided in an Exempted Fishing Permit (EFP) issued by the Regional Administrator.

(5) If a proposal is disapproved by the NEFSC Director or the NOAA Grants Office, or if the Regional Administrator determines that the allocated research quota cannot be utilized by a project, the Regional Administrator shall reallocate the unallocated or unused amount of research quota to the respective commercial and recreational fisheries by publication of a notice in the **Federal Register** in compliance with the Administrative Procedure Act, provided:

(i) The reallocation of the unallocated or unused amount of research quota is in accord with National Standard 1, and can be available for harvest before the end of the fishing year for which the research quota is specified; and

(ii) Any reallocation of unallocated or unused research quota shall be consistent with the proportional division of quota between the commercial and recreational fisheries in the relevant FMP and allocated to the remaining quota periods for the fishing year proportionally.

(6) Vessels participating in approved research projects may be exempted from certain management measures by the Regional Administrator, provided that one of the following analyses of the impacts associated with the exemptions is provided:

(i) The analysis of the impacts of the requested exemptions is included as part of the annual quota specification packages submitted by the MAFMC; or

(ii) For proposals that require exemptions that extend beyond the scope of the analysis provided by the MAFMC, applicants may be required to provide additional analysis of impacts of the exemptions before issuance of an EFP will be considered, as specified in the EFP regulations at § 648.12(b).

■ 6. Section 648.23 is revised to read as follows:

§ 648.23 Mackerel, squid, and butterfish gear restrictions.

(a) *Mesh restrictions and exemptions.* (1) Vessels subject to the mesh restrictions in this paragraph (a) may not have available for immediate use any net, or any piece of net, with a mesh size smaller than that required.

(2) Owners or operators of otter trawl vessels possessing 1,000 lb (0.45 mt) or more of butterfish harvested in or from the EEZ may only fish with nets having a minimum codend mesh of 3 inches (76 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or, for codends with less than 100 meshes, the minimum mesh size codend shall be a minimum of one-third of the net, measured from the terminus of the codend to the headrope.

(3) Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ may only fish with nets having a minimum mesh size of 2⅛ inches (54 mm) during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1⅞ inches (48 mm) during Trimester II (May–Aug), diamond mesh, inside stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or, for codends with less than 150 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the headrope, unless they are fishing consistent with exceptions specified in paragraph (b) of this section.

(i) *Net obstruction or constriction.* Owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 2⅛ inches (54 mm) during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1⅞ inches (48 mm) during Trimester II (May–Aug), diamond mesh, inside stretch measure. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that would not be in contact with the ocean bottom if, during a tow, the regulated portion of the net were laid flat on the ocean floor. However, owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* may use net strengtheners (covers), splitting straps, and/or bull ropes or wire around the entire circumference of the codend,

provided they do not have a mesh opening of less than 5 inches (12.7 cm) diamond mesh, inside stretch measure. For the purposes of this paragraph (a)(3)(i), head ropes are not to be considered part of the top of the regulated portion of a trawl net.

(ii) *Illex fishery.* Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ and fishing during the months of June, July, August, and September for *Illex* seaward of the following coordinates (copies of a map depicting this area are available from the Regional Administrator upon request) are exempt from the *Loligo* gear requirements in paragraph (a)(3) of this section, provided they do not have available for immediate use, as defined in paragraph (b) of this section, any net, or any piece of net, with a mesh size less than 1⅞ inches (48 mm) diamond mesh or any net, or any piece of net, with mesh that is rigged in a manner that is prohibited by paragraph (a)(3) of this section, when the vessel is landward of the specified coordinates.

Point	N. lat.	W. long.
M1	43°58.0′	67°22.0′
M2	43°50.0′	68°35.0′
M3	43°30.0′	69°40.0′
M4	43°20.0′	70°00.0′
M5	42°45.0′	70°10.0′
M6	42°13.0′	69°55.0′
M7	41°00.0′	69°00.0′
M8	41°45.0′	68°15.0′
M9	42°10.0′	67°10.0′
M10	41°18.6′	66°24.8′
M11	40°55.5′	66°38.0′
M12	40°45.5′	68°00.0′
M13	40°37.0′	68°00.0′
M14	40°30.0′	69°00.0′
M15	40°22.7′	69°00.0′
M16	40°18.7′	69°40.0′
M17	40°21.0′	71°03.0′
M18	39°41.0′	72°32.0′
M19	38°47.0′	73°11.0′
M20	38°04.0′	74°06.0′
M21	37°08.0′	74°46.0′
M22	36°00.0′	74°52.0′
M23	35°45.0′	74°53.0′
M24	35°28.0′	74°52.0′

(4) *Mackerel, squid, and butterfish bottom trawling restricted areas.* (i) *Oceanographer Canyon.* No permitted mackerel, squid, or butterfish vessel may fish with bottom trawl gear in the Oceanographer Canyon or be in the Oceanographer Canyon unless transiting. Vessels may transit this area provided the bottom trawl gear is stowed in accordance with the provisions of paragraph (b) of this section. Oceanographer Canyon is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

OCEANOGRAPHER CANYON

Point	N. lat.	W. long.
OC1	40°10.0′	68°12.0′
OC2	40°24.0′	68°09.0′
OC3	40°24.0′	68°08.0′
OC4	40°10.0′	67°59.0′
OC1	40°10.0′	68°12.0′

(ii) *Lydonia Canyon.* No permitted mackerel, squid, or butterfish vessel may fish with bottom trawl gear in the Lydonia Canyon or be in the Lydonia Canyon unless transiting. Vessels may transit this area provided the bottom trawl gear is stowed in accordance with the provisions of paragraph (b) of this section. Lydonia Canyon is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

LYDONIA CANYON

Point	N. lat.	W. long.
LC1	40°16.0′	67°34.0′
LC2	40°16.0′	67°42.0′
LC3	40°20.0′	67°43.0′
LC4	40°27.0′	67°40.0′
LC5	40°27.0′	67°38.0′
LC1	40°16.0′	67°34.0′

(b) *Definition of ''not available for immediate use.''* Gear that is shown not to have been in recent use and that is stowed in conformance with one of the following methods is considered to be not available for immediate use:

(1) *Nets*—(i) *Below-deck stowage.* (A) The net is stored below the main working deck from which it is deployed and retrieved;

(B) The towing wires, including the leg wires, are detached from the net; and

(C) It is fan-folded (flaked) and bound around its circumference.

(ii) *On-deck stowage.* (A) The net is fan-folded (flaked) and bound around its circumference;

(B) It is securely fastened to the deck or rail of the vessel; and

(C) The towing wires, including the leg wires, are detached from the net.

(iii) *On-reel stowage.* (A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

(B) The towing wires are detached from the net; and

(C) The codend is removed and stored below deck.

(iv) *On-reel stowage for vessels transiting the Gulf of Maine Rolling Closure Areas, the Georges Bank Seasonal Area Closure, and the Conditional Gulf of Maine Rolling Closure Area.*

(A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

(B) The towing wires are detached from the doors; and

(C) No containment rope, codend tripping device, or other mechanism to close off the codend is attached to the codend.

(2) *Scallop dredges.* (i) The towing wire is detached from the scallop dredge, the towing wire is completely reeled up onto the winch, the dredge is secured, and the dredge or the winch is covered so that it is rendered unusable for fishing; or

(ii) The towing wire is detached from the dredge and attached to a bright-colored poly ball no less than 24 inches (60.9 cm) in diameter, with the towing wire left in its normal operating position (through the various blocks) and either is wound back to the first block (in the gallows) or is suspended at the end of the lifting block where its retrieval does not present a hazard to the crew and where it is readily visible from above.

(3) *Hook gear (other than pelagic).* All anchors and buoys are secured and all hook gear, including jigging machines, is covered.

(4) *Sink gillnet gear.* All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or rail, and all buoys larger than 6 inches (15.24 cm) in diameter, high flyers, and anchors are disconnected.

(5) *Other methods of stowage.* Any other method of stowage authorized in writing by the Regional Administrator and subsequently published in the **Federal Register**.

(c) *Mesh obstruction or constriction.* The owner or operator of a fishing vessel shall not use any mesh construction, mesh configuration, or other means that effectively decreases the mesh size below the minimum mesh size, except that a liner may be used to close the opening created by the rings in the aftermost portion of the net, provided the liner extends no more than 10 meshes forward of the aftermost portion of the net. The inside webbing of the codend shall be the same circumference or less than the outside webbing (strengthener). In addition, the inside webbing shall not be more than 2 ft (61 cm) longer than the outside webbing.

■ 7. Section 648.24 is revised to read as follows:

§ 648.24 Fishery closures and accountability measures.

(a) *Fishery closure procedures*—(1) *Loligo.* NMFS shall close the directed fishery in the EEZ for *Loligo* when the Regional Administrator projects that 90 percent of the *Loligo* quota is harvested in Trimesters I and II, and when 95 percent of the *Loligo* DAH has been harvested in Trimester III. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.26.

(i) If the Regional Administrator determines that the Trimester I closure threshold has been under-harvested by 25 percent or more, then the amount of the underharvest shall be reallocated to Trimester II and Trimester III, as specified at § 648.22(f)(2), through notice in the **Federal Register**.

(ii) [*Reserved*]

(2) *Illex.* NMFS shall close the directed *Illex* fishery in the EEZ when the Regional Administrator projects that 95 percent of the *Illex* DAH is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.26.

(b) *Mackerel AMs.* (1) *Mackerel commercial sector EEZ closure.* NMFS shall close the commercial mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the mackerel DAH is harvested, if such a closure is necessary to prevent the DAH from being exceeded. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed as specified in § 648.26. When the Regional Administrator projects that the DAH for mackerel shall be landed, NMFS shall close the commercial mackerel fishery in the EEZ, and the incidental catches specified for mackerel in § 648.26 will be prohibited.

(2) *Mackerel commercial landings overage repayment.* If the mackerel ACL is exceeded, and commercial fishery landings are responsible for the overage, then landings in excess of the DAH will be deducted from the DAH the following year, as a single-year adjustment to the DAH.

(3) *Mackerel recreational sector EEZ closure.* NMFS shall close the recreational mackerel fishery in the EEZ when the Regional Administrator determines that recreational landings have exceeded the RHL. This determination shall be based on observed landings and will not utilize projections of future data.

(4) *Mackerel recreational landings overage repayment.* If the mackerel ACL is exceeded, and the recreational fishery landings are responsible for the overage, then landings in excess of the RHL will be deducted from the RHL for the following year, as a single-year adjustment.

(5) *Non-landing AMs, by sector.* In the event that the ACL is exceeded, and that the overage has not been accommodated through other landing-based AMs, but is attributable to either the commercial or recreational sector (such as research quota overages, dead discards in excess of those otherwise accounted for in management uncertainty, or other non-landing overages), then the exact amount, in pounds, by which the sector ACT was exceeded will be deducted from the following year, as a single-year adjustment.

(6) *Mackerel ACL overage evaluation.* The ACL will be evaluated based on a single-year examination of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the **Federal Register**, by March 31 of the fishing year in which the deductions will be made.

(c) *Butterfish AMs*—(1) *Butterfish EEZ closure.* NMFS shall close the directed butterfish fishery in the EEZ when the Regional Administrator projects that 80 percent of the butterfish DAH has been harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed as specified at § 648.26.

(2) *Butterfish ACL overage repayment.* If the butterfish ACL is exceeded, then catch in excess of the ACL will be deducted from the ACL the following year, as a single-year adjustment.

(3) *Butterfish mortality cap on the Loligo fishery.* NMFS shall close the directed fishery in the EEZ for *Loligo* when the Regional Administrator projects that 80 percent of the butterfish mortality cap has been harvested in Trimester I, and/or when 90 percent of the butterfish mortality cap has been harvested in Trimester III.

(4) *Butterfish ACL overage evaluation.* The ACL will be evaluated based on a single-year examination of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the **Federal Register**, by March 31 of the fishing year in which the deductions will be made.

(d) *Notification.* Upon determining that a closure is necessary, the Regional Administrator will notify, in advance of the closure, the Executive Directors of the MAFMC, NEFMC, and SAFMC; mail notification of the closure to all holders of mackerel, squid, and butterfish fishery permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of closure in the **Federal Register**.

■ 8. Section 648.25 is revised to read as follows:

§ 648.25 Atlantic Mackerel, squid, and butterfish framework adjustments to management measures.

(a) *Within season management action.* The MAFMC may, at any time, initiate action to add or adjust management measures within the Atlantic Mackerel, Squid, and Butterfish FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP.

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions, recreational possession limit; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system, including commercial quota allocation procedure and possible quota set-asides to mitigate bycatch; recreational harvest limit; annual specification quota setting process; FMP Monitoring Committee composition and process; description and identification of EFH (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional gear restrictions;

regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs); any other management measures currently included in the FMP, set aside quota for scientific research, regional management, and process for inseason adjustment to the annual specification. Measures contained within this list that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require amendment of the FMP instead of a framework adjustment.

(2) *MAFMC recommendation.* After developing management actions and receiving public testimony, the MAFMC shall make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, the MAFMC must consider at least the following factors, and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures following their implementation as a final rule.

(3) *NMFS action.* If the MAFMC's recommendation includes adjustments or additions to management measures and, after reviewing the MAFMC's recommendation and supporting information:

(i) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the MAFMC recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [*Reserved*]

■ 9. Section 648.26 is revised to read as follows:

§ 648.26 Mackerel, squid, and butterfish possession restrictions.

(a) *Atlantic mackerel.* During a closure of the commercial Atlantic mackerel fishery that occurs prior to June 1, vessels may not fish for, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. During a closure of the commercial fishery for mackerel that occurs on or after June 1, vessels may not fish for, possess, or land more than 50,000 lb (22.7 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day.

(b) *Loligo.* During a closure of the directed fishery for *Loligo,* vessels may not fish for, possess, or land more than 2,500 lb (1.13 mt) of *Loligo* per trip at any time, and may only land *Loligo* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued a *Loligo* incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 2,500 lb (1.13 mt) of *Loligo* per trip at any time and may only land *Loligo* once on any calendar day.

(c) *Illex.* During a closure of the directed fishery for *Illex,* vessels may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued an *Illex* incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day.

(d) *Butterfish.* (1) During a closure of the directed fishery for butterfish that occurs prior to October 1, vessels may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. During a closure of the directed fishery for butterfish that occurs on or after October 1, vessels may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day. If a vessel has been issued a butterfish incidental catch permit (as specified at § 648.4(a)(5)(ii)), it may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, unless the directed fishery for butterfish closes prior to October 1, then a vessel that has been issued a butterfish incidental catch permit may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day.

(2) A vessel issued a butterfish moratorium permit (as specified at § 648.4(a)(5)(i)) may not fish for, possess, or land more than 5,000 lb (2.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

■ 10. Section 648.27 is added to subpart B read as follows:

§ 648.27 Observer requirements for the Loligo fishery.

(a) A vessel issued a *Loligo* and butterfish moratorium permit, as specified at § 648.4(a)(5)(i), must, for the purposes of observer deployment, have a representative provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, telephone number or e-mail address for contact; and the date, time, port of departure, and approximate trip duration, at least 72 hr, but no more than 10 days, prior to beginning any fishing trip, unless it complies with the possession restrictions in paragraph (c) of this section.

(b) A vessel that has a representative provide notification to NMFS as

described in paragraph (a) of this section may only embark on a *Loligo* trip without an observer if a vessel representative has been notified by NMFS that the vessel has received a waiver of the observer requirement for that trip. NMFS shall notify a vessel representative whether the vessel must carry an observer, or if a waiver has been granted, for the specified *Loligo* trip, within 24 hr of the vessel representative's notification of the prospective *Loligo* trip, as specified in paragraph (a) of this section. Any request to carry an observer may be waived by NMFS. A vessel that fishes with an observer waiver confirmation number that does not match the *Loligo* trip plan that was called in to NMFS is prohibited from fishing for, possessing, harvesting, or landing *Loligo* except as specified in paragraph (c) of this section. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date.

(c) A vessel issued a *Loligo* and butterfish moratorium permit, as specified in § 648.4(a)(5)(i), that does not have a representative provide the trip notification required in paragraph (a) of this section is prohibited from fishing for, possessing, harvesting, or landing 2,500 lb (1.13 mt) or more of *Loligo* per trip at any time, and may only land *Loligo* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(d) If a vessel issued a *Loligo* and butterfish moratorium permit, as specified in § 648.4(a)(5)(i), intends to possess, harvest, or land 2,500 lb (1.13 mt) or more of *Loligo* per trip or per calendar day, has a representative notify NMFS of an upcoming trip, is selected by NMFS to carry an observer, and then cancels that trip, the representative is required to provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, and telephone number or e-mail address for contact, and the intended date, time, and port of departure for the cancelled trip prior to the planned departure time. In addition, if a trip selected for observer coverage is cancelled, then that vessel is required to carry an observer, provided an observer is available, on its next trip.

■ 11. Section 648.70 is revised to read as follows:

§ 648.70 Surfclam and ocean quahog Annual Catch Limit (ACL).

(a) The MAFMC staff shall recommend to the MAFMC ACLs for the surfclam and ocean quahog fisheries, which shall be equal to the ABCs recommended by the SSC.

(1) *Sectors.* The surfclam and ocean quahog ACLs will be established consistent with the guidelines contained in the Atlantic Surfclam and Ocean Quahog FMP. The ACL for ocean quahog will then be allocated to the Maine and non-Maine components of the fishery according to the allocation guidelines of the Atlantic Surfclam and Ocean Quahog FMP as specified in § 648.78(b).

(2) *Periodicity.* The surfclam and ocean quahog ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review.* The MAFMC staff shall conduct a detailed review of the fishery performance relative to the ACLs at least every 5 years.

(1) If the surfclam or the ocean quahog ACL is exceeded with a frequency greater than 25 percent (*i.e.,* more than once in 4 years or any 2 consecutive years), the MAFMC staff will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure the ACL is not exceeded as frequently.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that a stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

■ 12. Section 648.71 is revised to read as follows:

§ 648.71 Surfclam and ocean quahog Annual Catch Targets (ACT).

(a) The MAFMC staff shall identify and review the relevant sources of management uncertainty to recommend ACTs to the MAFMC as part of the surfclam and ocean quahog specification process. The MAFMC staff recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* The surfclam ACT and the sum of the Maine and non-Maine ocean quahog ACTs shall be less than or equal to the ACL for the corresponding stock. The MAFMC staff shall recommend any reduction in catch necessary to address management uncertainty, consistent with paragraph (a) of this section.

(2) *Periodicity.* ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review.* The MAFMC staff shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.70(b)(1) through (3).

■ 13. Section 648.72 is revised to read as follows:

§ 648.72 Surfclam and ocean quahog specifications.

(a) *Establishing catch quotas.* The amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified for up to a 3-year period by the Regional Administrator. Specifications of the annual quotas will be accomplished in the final year of the quota period, unless the quotas are modified in the interim pursuant to paragraph (b) of this section. The amount of surfclams available for harvest annually must be specified within the range of 1.85 to 3.4 million bu (98.5 to 181 million L). The amount of ocean quahogs available for harvest annually must be specified within the range of 4 to 6 million bu (213 to 319.4 million L). Quotas for surfclams and ocean quahogs may be specified below these ranges if the ABC recommendation of the SSC limits the ACL to a value less than the minimum of the range indicated.

(1) *Quota reports.* On an annual basis, MAFMC staff will produce and provide to the MAFMC an Atlantic surfclam and ocean quahog annual quota recommendation paper based on the ABC recommendation of the SSC, the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a multi-year annual quota specification expires, the MAFMC, following an opportunity for public comment, will recommend to the Regional Administrator annual quotas and estimates of DAH and DAP within the ranges specified for up to a 3-year period. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

(i) Exploitable and spawning biomass relative to the OY.

(ii) Fishing mortality rates relative to the OY.

(iii) Magnitude of incoming recruitment.

(iv) Projected effort and corresponding catches.

(v) Geographical distribution of the catch relative to the geographical distribution of the resource.

(vi) Status of areas previously closed to surfclam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(2) *Public review.* Based on the recommendation of the MAFMC, the Regional Administrator shall publish proposed surfclam and ocean quahog quotas in the **Federal Register**. The Regional Administrator shall consider public comments received, determine the appropriate annual quotas, and publish the annual quotas in the **Federal Register**. The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surfclam and Ocean Quahog FMP. The Regional Administrator may set quotas at quantities different from the MAFMC's recommendations only if he/she can demonstrate that the MAFMC's recommendations violate the national standards of the Magnuson-Stevens Act or the objectives of the Atlantic Surfclam and Ocean Quahog FMP or other applicable law.

(b) *Interim quota modifications.* Based upon information presented in the quota reports described in paragraph (a)(1) of this section, the MAFMC may recommend to the Regional Administrator a modification to the annual quotas that have been specified for a 3-year period and any estimate of DAH or DAP made in conjunction with such specifications within the ranges specified in paragraph (a)(1) of this section. Based upon the MAFMC's recommendation, the Regional Administrator may propose surfclam and or ocean quahog quotas that differ from the annual quotas specified for the current 3-year period. Such modification shall be in effect for a period of up to 3 years, unless further modified. Any interim modification shall follow the same procedures for establishing the annual quotas that are specified for up to a 3-year period.

(c) *Annual quotas.* The annual quotas for surfclams and ocean quahogs will remain effective unless revised pursuant to this section. At the end of a multiyear quota period, NMFS will issue notification in the **Federal Register** if the previous year's specifications will not be changed.

■ 14. Section 648.73 is revised to read as follows:

§ 648.73 Surfclam and ocean quahog Accountability Measures.

(a) *Commercial ITQ fishery.* (1) If the ACL for surfclam or ocean quahog is exceeded, and the overage can be attributed to one or more ITQ allocation holders, the full amount of the overage will be deducted from the appropriate ITQ allocation in the following fishing year.

(2) Any amount of an ACL overage that cannot be otherwise attributed to an ITQ allocation holder will be deducted from the appropriate ACL in the following fishing year.

(b) *Maine mahogany quahog fishery.* If the ocean quahog ACL is exceeded, and the Maine mahogany quahog fishery is responsible for the overage, than the Maine fishery ACT shall be reduced in the following year by an amount equal to the ACL overage.

■ 15. Section 648.74 is revised to read as follows:

§ 648.74 Annual individual allocations.

(a) *General.* (1) Each fishing year, the Regional Administrator shall determine the initial allocation of surfclams and ocean quahogs for the next fishing year for each allocation holder owning an allocation pursuant to paragraph (a)(2) of this section. For each species, the initial allocation for the next fishing year is calculated by multiplying the allocation percentage owned by each allocation owner as of the last day of the previous fishing year in which allocation owners are permitted to permanently transfer allocation percentage pursuant to paragraph (b) of this section (*i.e.,* October 15 of every year), by the quota specified by the Regional Administrator pursuant to § 648.72. The total number of bushels of allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.77. Amounts of allocation of 0.5 cages or smaller created by this division shall be rounded downward to the nearest whole number, and amounts of allocation greater than 0.5 cages created by this division shall be rounded upward to the nearest whole number, so that allocations are specified in whole cages. These allocations shall be made in the form of an allocation permit specifying the allocation percentage and the allocation in cages and cage tags for each species. An allocation permit is only valid for the entity for which it is issued. Such permits shall be issued on or before December 15, to allow allocation owners to purchase cage tags from a vendor specified by the Regional Administrator pursuant to § 648.77(b).

(2) The Regional Administrator may, after publication of a fee notification in the **Federal Register**, charge a permit fee before issuance of the permit to recover administrative expenses. Failure to pay the fee will preclude issuance of the permit.

(b) *Transfers*—(1) *Allocation percentage.* Subject to the approval of the Regional Administrator, part or all of an allocation percentage may be transferred in the year in which the transfer is made, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Approval of a transfer by the Regional Administrator and for a new allocation permit reflecting that transfer may be requested by submitting a written application for approval of the transfer and for issuance of a new allocation permit to the Regional Administrator at least 10 days before the date on which the applicant desires the transfer to be effective, in the form of a completed transfer log supplied by the Regional Administrator. The transfer is not effective until the new holder receives a new or revised annual allocation permit from the Regional Administrator. An application for transfer may not be made between October 15 and December 31 of each year.

(2) *Cage tags.* Cage tags issued pursuant to § 648.77 may be transferred at any time, and in any amount subject to the restrictions and procedure specified in paragraph (b)(1) of this section; provided that application for such cage tag transfers may be made at any time before December 10 of each year. The transfer is effective upon the receipt by the transferee of written authorization from the Regional Administrator.

(3) *Review.* If the Regional Administrator determines that the applicant has been issued a Notice of Permit Sanction for a violation of the Magnuson-Stevens Act that has not been resolved, he/she may decline to approve such transfer pending resolution of the matter.

■ 16. Section 648.75 is revised to read as follows:

§ 648.75 Shucking at sea and minimum surfclam size.

(a) *Shucking at sea*—(1) *Observers.* (i) The Regional Administrator may allow the shucking of surfclams or ocean quahogs at sea if he/she determines that an observer carried aboard the vessel can measure accurately the total amount of surfclams and ocean quahogs harvested in the shell prior to shucking.

(ii) Any vessel owner may apply in writing to the Regional Administrator to shuck surfclams or ocean quahogs at sea. The application shall specify: Name

and address of the applicant; permit number of the vessel; method of calculating the amount of surfclams or ocean quahogs harvested in the shell; vessel dimensions and accommodations; and length of fishing trip.

(iii) The Regional Administrator shall provide an observer to any vessel owner whose application is approved. The owner shall pay all reasonable expenses of carrying the observer on board the vessel.

(iv) Any observer shall certify at the end of each trip the amount of surfclams or ocean quahogs harvested in the shell by the vessel. Such certification shall be made by the observer's signature on the daily fishing log required by § 648.7.

(2) *Conversion factor.* (i) Based on the recommendation of the MAFMC, the Regional Administrator may allow shucking at sea of surfclams or ocean quahogs, with or without an observer, if he/she determines a conversion factor for shucked meats to calculate accurately the amount of surfclams or ocean quahogs harvested in the shell.

(ii) The Regional Administrator shall publish notification in the **Federal Register** specifying a conversion factor, together with the data used in its calculation, for a 30-day comment period. After consideration of the public comments and any other relevant data, the Regional Administrator may publish final notification in the **Federal Register** specifying the conversion factor.

(iii) If the Regional Administrator makes the determination specified in paragraph (b)(1) of this section, he/she may authorize the vessel owner to shuck surfclams or ocean quahogs at sea. Such authorization shall be in writing and be carried aboard the vessel.

(b) *Minimum surfclam size*—(1) *Minimum length.* The minimum length for surfclams is 4.75 inches (12.065 cm).

(2) *Determination of compliance.* No more than 50 surfclams in any cage may be less than 4.75 inches (12.065 cm) in length. If more than 50 surfclams in any inspected cage of surfclams are less than 4.75 inches (12.065 cm) in length, all cages landed by the same vessel from the same trip are deemed to be in violation of the minimum size restriction.

(3) *Suspension.* Upon the recommendation of the MAFMC, the Regional Administrator may suspend annually, by publication in the **Federal Register**, the minimum shell-length standard, unless discard, catch, and survey data indicate that 30 percent of the surfclams are smaller than 4.75 inches (12.065 cm) and the overall reduced shell length is not attributable to beds where the growth of individual surfclams has been reduced because of density dependent factors.

(4) *Measurement.* Length is measured at the longest dimension of the surfclam shell.

■ 17. Section 648.76 is revised to read as follows:

§ 648.76 Closed areas.

(a) *Areas closed because of environmental degradation.* Certain areas are closed to all surfclam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Regional Administrator determines that the adverse environmental conditions no longer exist. If additional areas are identified by the Regional Administrator as being contaminated by the introduction or presence of hazardous materials or pollutants, they may be closed by the Regional Administrator in accordance with paragraph (c) of this section. The areas closed are:

(1) *Boston Foul Ground.* The waste disposal site known as the ''Boston Foul Ground'' and located at 42°25′36″ N. lat., 70°35′00″ W. long., with a radius of 1 nm (1.61 km) in every direction from that point.

(2) *New York Bight.* The polluted area and waste disposal site known as the ''New York Bight'' and located at 40°25′04″ N. lat., 73°42′38″ W. long., and with a radius of 6 nm (9.66 km) in every direction from that point, extending further northwestward, westward and southwestward between a line from a point on the arc at 40°31′00″ N. lat., 73°43′38″ W. long., directly northward toward Atlantic Beach Light in New York to the limit of the state territorial waters of New York; and a line from the point on the arc at 40°19′48″ N. lat., 73°45′42″ W. long., to a point at the limit of the state territorial waters of New Jersey at 40°14′00″ N. lat., 73°55′42″ W. long.

(3) *106 Dumpsite.* The toxic industrial site known as the ''106 Dumpsite'' and located between 38°40′00″ and 39°00′00″ N. lat., and between 72°00′00″ and 72°30′00″ W. long.

(4) *Georges Bank.* The paralytic shellfish poisoning (PSP) contaminated area, which is located on Georges Bank, and located east of 69° W. long., and south of 42°20′ N. lat.

(b) *Areas closed because of small surfclams.* Areas may be closed because they contain small surfclams.

(1) *Closure.* The Regional Administrator may close an area to surfclams and ocean quahog fishing if he/she determines, based on logbook entries, processors' reports, survey cruises, or other information, that the area contains surfclams of which:

(i) Sixty percent or more are smaller than 4.5 inches (11.43 cm); and

(ii) Not more than 15 percent are larger than 5.5 inches (13.97 cm) in size.

(2) *Reopening.* The Regional Administrator may reopen areas or parts of areas closed under paragraph (b)(1) of this section if he/she determines, based on survey cruises or other information, that:

(i) The average length of the dominant (in terms of weight) size class in the area to be reopened is equal to or greater than 4.75 inches (12.065 cm); or

(ii) The yield or rate of growth of the dominant shell-length class in the area to be reopened would be significantly enhanced through selective, controlled, or limited harvest of surfclams in the area.

(c) *Procedure.* (1) The Regional Administrator may hold a public hearing on the proposed closure or reopening of any area under paragraph (a) or (b) of this section. The Regional Administrator shall publish notification in the **Federal Register** of any proposed area closure or reopening, including any restrictions on harvest in a reopened area. Comments on the proposed closure or reopening must be submitted to the Regional Administrator within 30 days after publication. The Regional Administrator shall consider all comments and publish the final notification of closure or reopening, and any restrictions on harvest, in the **Federal Register**. Any adjustment to harvest restrictions in a reopened area shall be made by notification in the **Federal Register**. The Regional Administrator shall send notice of any action under this paragraph (c)(1) to each surfclam and ocean quahog processor and to each surfclam and ocean quahog permit holder.

(2) If the Regional Administrator determines, as the result of testing by state, Federal, or private entities, that a closure of an area under paragraph (a) of this section is necessary to prevent any adverse effects fishing may have on the public health, he/she may close the area for 60 days by publication of notification in the **Federal Register**, without prior comment or public hearing. If an extension of the 60-day closure period is necessary to protect the public health, the hearing and notice requirements of paragraph (c)(1) of this section shall be followed.

(d) *Areas closed due to the presence of paralytic shellfish poisoning toxin*—(1) *Maine mahogany quahog zone.* The Maine mahogany quahog zone is closed to fishing for ocean quahogs except in those areas of the zone that are tested by the State of Maine and deemed to be within the requirements of the National

Shellfish Sanitation Program and adopted by the Interstate Shellfish Sanitation Conference as acceptable limits for the toxin responsible for PSP. Harvesting is allowed in such areas during the periods specified by the Maine Department of Marine Resources during which quahogs are safe for human consumption. For information regarding these areas contact the State of Maine Division of Marine Resources.

(2) [Reserved]

■ 18. Section 648.77 is revised to read as follows:

§ 648.77 Cage identification.

Except as provided in § 648.78, the following cage identification requirements apply to all vessels issued a Federal fishing permit for surfclams and ocean quahogs:

(a) *Tagging.* Before offloading, all cages that contain surfclams or ocean quahogs must be tagged with tags acquired annually under provisions of paragraph (b) of this section. A tag must be fixed on or as near as possible to the upper crossbar of the cage. A tag is required for every 60 ft^3 (1,700 L) of cage volume, or portion thereof. A tag or tags must not be removed until the cage is emptied by the processor, at which time the processor must promptly remove and retain the tag(s) for 60 days beyond the end of the calendar year, unless otherwise directed by authorized law enforcement agents.

(b) *Issuance.* The Regional Administrator will issue a supply of tags to each individual allocation owner qualifying for an allocation under § 648.74 prior to the beginning of each fishing year, or he/she may specify, in the **Federal Register**, a vendor from whom the tags shall be purchased. The number of tags will be based on the owner's initial allocation as specified in § 648.74(a). Each tag represents 32 bu (1,700 L) of allocation.

(c) *Expiration.* Tags will expire at the end of the fishing year for which they are issued, or if rendered null and void in accordance with 15 CFR part 904.

(d) *Return.* Tags that have been rendered null and void must be returned to the Regional Administrator, if possible.

(e) *Loss.* Loss or theft of tags must be reported by the owner, numerically identifying the tags to the Regional Administrator by telephone as soon as the loss or theft is discovered and in writing within 24 hours. Thereafter, the reported tags shall no longer be valid for use under this part.

(f) *Replacement.* Lost or stolen tags may be replaced by the Regional Administrator if proper notice of the loss is provided by the person to whom the tags were issued. Replacement tags may be purchased from the Regional Administrator or a vendor with a written authorization from the Regional Administrator.

(g) *Transfer.* See § 648.74(b)(2).

(h) *Presumptions.* Surfclams and ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and to be part of an individual's allocation, unless the individual demonstrates that he/she has surrendered his/her Federal vessel permit issued under § 648.4(a)(4) and conducted fishing operations exclusively within waters under the jurisdiction of any state. Surfclams and ocean quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this section, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued under the provisions of § 648.77(b) or transferred under the provisions of § 648.74(b).

■ 19. Section 648.78 is added to subpart E to read as follows:

§ 648.78 Maine mahogany quahog zone.

(a) *Landing requirements.* (1) A vessel issued a valid Maine mahogany quahog permit pursuant to § 648.4(a)(4)(i), and fishing for or possessing ocean quahogs within the Maine mahogany quahog zone, must land its catch in the State of Maine.

(2) A vessel fishing under an individual allocation permit, regardless of whether it has a Maine mahogany quahog permit, fishing for or possessing ocean quahogs within the zone, may land its catch in the State of Maine, or, consistent with applicable state law in any other state that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with those food safety-based procedures used by the State of Maine for such purpose, and must comply with all requirements in §§ 648.74 and 648.77. Documentation required by the state and other laws and regulations applicable to food safety-based procedures must be made available by federally permitted dealers for inspection by NMFS.

(b) *ACT monitoring and closures*—(1) *Catch quota.* (i) The ACT for harvest of mahogany quahogs from within the Maine mahogany quahog zone is 100,000 Maine bu (35,239 hL). The ACL may be revised annually within the range of 17,000 and 100,000 Maine bu (5,991 and 35,239 hL) following the procedures set forth in §§ 648.72 and 648.73, if applicable.

(ii) All mahogany quahogs landed for sale in Maine by vessels issued a Maine mahogany quahog permit and not fishing for an individual allocation of ocean quahogs under § 648.74 shall be applied against the Maine mahogany quahog ACT, regardless of where the mahogany quahogs are harvested.

(iii) All mahogany quahogs landed by vessels fishing in the Maine mahogany quahog zone for an individual allocation of quahogs under § 648.74 will be counted against the ocean quahog allocation for which the vessel is fishing.

(iv) The Regional Administrator will monitor the ACT based on dealer reports and other available information, and shall determine the date when the ACT will be harvested. NMFS shall publish notification in the **Federal Register** advising the public that, effective upon a specific date, the Maine mahogany quahog quota has been harvested, and notifying vessel and dealer permit holders that no Maine mahogany quahog quota is available for the remainder of the year.

(2) *Maine Mahogany Quahog Advisory Panel.* The MAFMC shall establish a Maine Mahogany Quahog Advisory Panel consisting of representatives of harvesters, dealers, and the Maine Department of Marine Resources. The Advisory Panel shall make recommendations, through the Surfclam and Ocean Quahog Committee of the MAFMC, regarding revisions to the annual quota and other management measures.

■ 20. Section 648.79 is added to subpart E to read as follows:

§ 648.79 Surfclam and ocean quahog framework adjustments to management measures.

(a) *Within season management action.* The MAFMC may, at any time, initiate action to add or adjust management measures within the Atlantic Surfclam and Ocean Quahog FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels;

adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; description and identification of EFH (and fishing gear management measures that impact EFH); habitat areas of particular concern; set-aside quota for scientific research; VMS; OY range; suspension or adjustment of the surfclam minimum size limit; and changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs). Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

(2) *MAFMC recommendation.* After developing management actions and receiving public testimony, the MAFMC shall make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, it must consider at least the following factors, and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action.* If the MAFMC's recommendation includes adjustments or additions to management measures and after reviewing the MAFMC's recommendation and supporting information:

(i) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the MAFMC recommendation, the measures will be published as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

■ 21. Section 648.100 is revised to read as follows:

§ 648.100 Summer flounder Annual Catch Limit (ACL).

(a) The Summer Flounder Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational summer flounder fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

(1) *Sector allocations.* The commercial and recreational fishing sector ACLs will be established consistent with the allocation guidelines contained in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP).

(2) *Periodicity.* The summer flounder commercial and recreational sector ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review.* The Summer Flounder Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.,* more than once in 4 years or any 2 consecutive years), the Summer Flounder Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not exceeded as frequently.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that the summer flounder stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded but may be conducted in conjunction with such reviews.

■ 22. Section 648.101 is revised to read as follows:

§ 648.101 Summer flounder Annual Catch Target (ACT).

(a) The Summer Flounder Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the summer flounder specification process. The Summer Flounder Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Summer Flounder Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

(2) *Periodicity.* ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review.* The Summer Flounder Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.100(b)(1) through (3).

■ 23. Section 648.102 is revised to read as follows:

§ 648.102 Summer flounder specifications.

(a) *Commercial quota, recreational landing limits, research set-asides, and other specification measures.* The Summer Flounder Monitoring Committee shall recommend to the MAFMC, through the specifications process, for use in conjunction with each ACL and ACT, a sector-specific research set-aside, estimates of sector-related discards, recreational harvest limit, and commercial quota, along with other measures, as needed, that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The

measures to be considered by the Summer Flounder Monitoring Committee are:

(1) Research quota set from a range of 0 to 3 percent of the allowable landings level for both the commercial and recreational sectors.

(2) Commercial minimum fish size.

(3) Minimum mesh size.

(4) Restrictions on gear other than otter trawls.

(5) Adjustments to the exempted area boundary and season specified in § 648.108(b)(1) by 30-minute intervals of latitude and longitude and 2-week intervals, respectively, based on data reviewed by Summer Flounder Monitoring Committee during the specification process, to prevent discarding of sublegal sized summer flounder in excess of 10 percent, by weight.

(6) Recreational possession limit set from a range of 0 to 15 summer flounder to achieve the recreational harvest limit, set after reductions for research quota.

(7) Recreational minimum fish size.

(8) Recreational season.

(9) Recreational state conservation equivalent and precautionary default measures utilizing possession limits, minimum fish sizes, and/or seasons set after reductions for research quota.

(10) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

(11) Modification of existing AM measures and ACT control rules utilized by the Summer Flounder Monitoring Committee.

(b) *Specification fishing measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary that are projected to ensure the sector-specific ACLs for an upcoming fishing year or years will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC.

(c) After such review, the Regional Administrator will publish a proposed rule in the **Federal Register** to implement a coastwide commercial quota, a recreational harvest limit, research set-aside, adjustments to ACL or ACT resulting from AMs, and additional management measures for the commercial fishery. After considering public comment, NMFS will publish a final rule in the **Federal Register**.

(1) *Distribution of annual commercial quota.* (i) The annual commercial quota will be distributed to the states, based upon the following percentages; state followed by percent share in parenthesis: Maine (0.04756); New Hampshire (0.00046); Massachusetts (6.82046); Rhode Island (15.68298); Connecticut (2.25708); New York (7.64699); New Jersey (16.72499); Delaware (0.01779); Maryland (2.03910); Virginia (21.31676); North Carolina (27.44584).

(ii) [Reserved]

(2) *Quota transfers and combinations.* Any state implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to transfer part or its entire annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for summer flounder must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(i) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(A) The transfer or combination would preclude the overall annual quota from being fully harvested;

(B) The transfer addresses an unforeseen variation or contingency in the fishery; and

(C) The transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Act.

(ii) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made;

(iii) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notice that the Regional Administrator has disapproved the previous request or when notice of the approval of the transfer or combination has been filed at the Office of the Federal Register.

(iv) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (d)(1)(i) of this section.

(d) *Recreational specification measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC and ASMFC measures that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The MAFMC and the ASMFC will recommend that the Regional Administrator implement either:

(1) *Coastwide measures.* Annual coastwide management measures that constrain the recreational summer flounder fishery to the recreational harvest limit, or

(2) *Conservation equivalent measures.* Individual states, or regions formed voluntarily by adjacent states (*i.e.,* multi-state conservation equivalency regions), may implement different combinations of minimum fish sizes, possession limits, and closed seasons that achieve equivalent conservation as the coastwide measures established

under paragraph (e)(1) of this section. Each state or multi-state conservation equivalency region may implement measures by mode or area only if the proportional standard error of recreational landing estimates by mode or area for that state is less than 30 percent.

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the **Federal Register** as soon as possible to implement the overall percent adjustment in recreational landings required for the fishing year, and the ASMFC's recommendation concerning conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) The ASMFC will review conservation equivalency proposals and determine whether or not they achieve the necessary adjustment to recreational landings. The ASMFC will provide the Regional Administrator with the individual state and/or multi-state region conservation measures for the approved state and/or multi-state region proposals and, in the case of disapproved state and/or multi-state region proposals, the precautionary default measures.

(iii) The ASMFC may allow states assigned the precautionary default measures to resubmit revised management measures. The ASMFC will detail the procedures by which the state can develop alternate measures. The ASMFC will notify the Regional Administrator of any resubmitted state proposals approved subsequent to publication of the final rule and the Regional Administrator will publish a notice in the **Federal Register** to notify the public.

(iv) After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement either the state specific conservation equivalency measures or coastwide measures to ensure that the applicable specified target is not exceeded.

(e) *Research quota.* See § 648.22(g).

■ 24. Section 648.103 is revised to read as follows:

§ 648.103 Summer flounder accountability measures.

(a) *Commercial sector EEZ closure.* The Regional Administrator shall close the EEZ to fishing for summer flounder by commercial vessels for the remainder of the calendar year by publishing notification in the **Federal Register** if he/she determines that the inaction of one or more states will cause the commercial sector ACL to be exceeded, or if the commercial fisheries in all states have been closed. The Regional Administrator may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the sector ACL to be exceeded.

(b) *State commercial landing quotas.* The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. The Regional Administrator shall publish notification in the **Federal Register** advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state.

(1) *Commercial ACL overage evaluation.* The commercial sector ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the commercial sector ACL has been exceeded.

(2) *Commercial landings overage repayment.* All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any landings in excess of the commercial quota in any state, inclusive of any state-to-state transfers, will be deducted from that state's annual quota for the following year in the final rule that establishes the annual state-by-state quotas, irrespective of whether the commercial sector ACL is exceeded. The overage deduction will be based on landings for the current year through October 31 and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the **Federal Register** announcing such restoration.

(c) *Recreational landings sector closure.* The Regional Administrator will monitor recreational landings based on the best available data and shall determine if the recreational harvest limit has been met or exceeded. The determination will be based on observed landings and will not utilize projections of future landings. At such time that the available data indicate that the recreational harvest limit has been met or exceeded, the Regional Administrator shall publish notification in the **Federal Register** advising that, effective on a specific date, the summer flounder recreational fishery in the EEZ shall be closed for remainder of the calendar year.

(1) *Recreational ACL overage evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs; and for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(2) *Recreational landing overage repayment.* If available data indicate that the recreational sector ACL has been exceeded and the landings have exceeded the RHL, the exact poundage of the landings overage will be deducted, as soon as possible, from a subsequent single fishing year recreational sector ACT.

(d) *Non-landing accountability measures, by sector.* In the event that a sector ACL has been exceeded and the overage has not been accommodated through landing-based AMs, then the exact amount by which the sector ACL was exceeded, in pounds, will be deducted, as soon as possible, from the applicable subsequent single fishing year sector ACL.

(e) *State/Federal disconnect AM.* If the total catch, allowable landing, commercial quotas and/or RHL measures adopted by the ASMFC Summer Flounder Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures so no differential effects occur on Federal permit holders.

■ 25. Section 648.104 is revised to read as follows:

§ 648.104 Summer flounder minimum fish sizes.

(a) *Moratorium (commercial) permitted vessels.* The minimum size for summer flounder is 14 inches (35.6 cm) TL for all vessels issued a moratorium permit under § 648.4(a)(3), except on board party and charter boats carrying passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat.

(b) *Party/charter permitted vessels and recreational fishery participants.* Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 18.5 inches (46.99 cm) TL for all vessels that do not qualify for a moratorium permit under § 648.4(a)(3), and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

(c) The minimum sizes in this section apply to whole fish or to any part of a fish found in possession, *e.g.,* fillets, except that party and charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if all state requirements are met.

■ 26. Section 648.105 is revised to read as follows:

§ 648.105 Summer flounder recreational fishing season.

Unless otherwise specified pursuant to § 648.107, vessels that are not eligible for a moratorium permit under § 648.4(a)(3), and fishermen subject to the possession limit, may fish for summer flounder from May 1 through September 30. This time period may be adjusted pursuant to the procedures in § 648.102.

■ 27. Section 648.106 is revised to read as follows:

§ 648.106 Summer flounder possession restrictions.

(a) *Party/charter and recreational possession limits.* Unless otherwise specified pursuant to § 648.107, no person shall possess more than two summer flounder in, or harvested from, the EEZ, unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.102.

(b) If whole summer flounder are processed into fillets, the number of fillets will be converted to whole summer flounder at the place of landing by dividing the fillet number by two. If summer flounder are filleted into single (butterfly) fillets, each fillet is deemed to be from one whole summer flounder.

(c) Summer flounder harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of summer flounder on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

(d) *Commercially permitted vessel possession limits.* Owners and operators of otter trawl vessels issued a permit under § 648.4(a)(3) that fish with or possess nets or pieces of net on board that do not meet the minimum mesh requirements and that are not stowed in accordance with § 648.108(e), may not retain 100 lb (45.4 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.7 kg) or more of summer flounder from November 1 through April 30, unless the vessel possesses a valid summer flounder small-mesh exemption LOA and is fishing in the exemption area as specified in § 648.108(b). Summer flounder on board these vessels must be stored so as to be readily available for inspection in standard 100-lb (45.3-kg) totes or fish boxes having a liquid capacity of 18.2 gal (70 L), or a volume of not more than 4,320 in^3 (2.5 ft^3 or 70.79 cm^3).

■ 28. Section 648.107 is revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder party/charter and recreational fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by Massachusetts through North Carolina for 2011 are the conservation equivalent of the recreational fishing season, minimum fish size, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the ASMFC.

(1) Federally permitted party and charter vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels harvesting summer flounder in or from the EEZ and subject to the recreational fishing measures of this part, landing summer flounder in a state whose fishery management measures are determined by the Regional Administrator to be conservation equivalent shall not be subject to the more restrictive Federal measures, pursuant to the provisions of § 648.4(b). Those vessels shall be subject to the recreational fishing measures implemented by the state in which they land.

(2) [Reserved]

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels subject to the recreational fishing measures of this part and registered in states whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the ASMFC, shall be subject to the following precautionary default measures: Season—May 1 through September 30; minimum size—20.0 inches (50.80 cm); and possession limit—two fish.

■ 29. Section 648.108 is revised to read as follows:

§ 648.108 Summer flounder gear restrictions.

(a) *General.* (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 lb (45.4 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.7 kg) or more of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square mesh applied throughout the body, extension(s), and codend portion of the net.

(2) Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for

mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(b) *Exemptions.* Unless otherwise restricted by this part, the minimum mesh-size requirements specified in paragraph (a)(1) of this section do not apply to:

(1) Vessels issued a summer flounder moratorium permit, a Summer Flounder Small-Mesh Exemption Area letter of authorization (LOA), required under paragraph (b)(1)(i) of this section, and fishing from November 1 through April 30 in the exemption area, which is east of the line that follows 72°30.0′ W. long. until it intersects the outer boundary of the EEZ (copies of a map depicting the area are available upon request from the Regional Administrator). Vessels fishing under the LOA shall not fish west of the line. Vessels issued a permit under § 648.4(a)(3)(iii) may transit the area west or south of the line, if the vessel's fishing gear is stowed in a manner prescribed under § 648.108(e), so that it is not ''available for immediate use'' outside the exempted area. The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent, by weight, of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she shall publish notification in the **Federal Register** terminating the exemption for the remainder of the exemption season.

(i) *Requirements.* (A) A vessel fishing in the Summer Flounder Small-Mesh Exemption Area under this exemption must have on board a valid LOA issued by the Regional Administrator.

(B) The vessel must be in enrolled in the exemption program for a minimum of 7 days.

(ii) [Reserved]

(2) Vessels fishing with a two-seam otter trawl fly net with the following configuration, provided that no other nets or netting with mesh smaller than 5.5 inches (14.0 cm) are on board:

(i) The net has large mesh in the wings that measures 8 inches (20.3 cm) to 64 inches (162.6 cm).

(ii) The first body section (belly) of the net has 35 or more meshes that are at least 8 inches (20.3 cm).

(iii) The mesh decreases in size throughout the body of the net to 2 inches (5 cm) or smaller towards the terminus of the net.

(3) The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption, on average, are discarding more than 1 percent of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she shall publish notification in the **Federal Register** terminating the exemption for the remainder of the calendar year.

(c) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.2 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (c), head ropes shall not be considered part of the top of the regulated portion of a trawl net. A vessel shall not use any means or mesh configuration on the top of the regulated portion of the net, as defined paragraph (c) of this section, if it obstructs the meshes of the net or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum specified in paragraph (a) of this section.

(d) *Mesh obstruction or constriction.* (1) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (c) of this section, that obstructs the meshes of the net in any manner.

(2) No person on any vessel may possess or fish with a net capable of catching summer flounder in which the bars entering or exiting the knots twist around each other.

(e) *Stowage of nets.* Otter trawl vessels retaining 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30, and subject to the minimum mesh size requirement of paragraph (a)(1) of this section may not have ''available for immediate use'' any net or any piece of net that does not meet the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size requirement. A net that is stowed in conformance with one of the methods specified in § 648.23(b) and that can be shown not to have been in recent use is considered to be not ''available for immediate use.''

(f) The minimum net mesh requirement may apply to any portion of the net. The minimum mesh size and the portion of the net regulated by the minimum mesh size may be adjusted pursuant to the procedures in § 648.102.

■ 30. Section 648.109 is added to subpart G to read as follows:

§ 648.109 Sea turtle conservation.

Sea turtle regulations are found at 50 CFR parts 222 and 223.

■ 31. Section 648.110 is added to subpart G to read as follows:

§ 648.110 Summer flounder framework adjustments to management measures.

(a) *Within season management action.* The MAFMC may, at any time, initiate action to add or adjust management measures within the Summer Flounder, Scup, and Black Sea Bass FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP.

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions; recreational

possession limit; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch; recreational harvest limit; specification quota setting process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; operator permits; changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs); any other commercial or recreational management measures; any other management measures currently included in the FMP; and set aside quota for scientific research. Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

(2) *MAFMC recommendation.* After developing management actions and receiving public testimony, the MAFMC shall make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, it must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action.* If the MAFMC's recommendation includes adjustments or additions to management measures and, if after reviewing the MAFMC's recommendation and supporting information:

(i) NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the MAFMC recommendation, the measures will be published as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [*Reserved*]

■ 32. Section 648.120 is revised to read as follows:

§ 648.120 Scup Annual Catch Limit (ACL).

(a) The Scup Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational scup fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

(1) *Sector allocations.* The commercial and recreational fishing sector ACLs will be established consistent with the allocation guidelines contained in the Summer Flounder, Scup, and Black Sea Bass FMP.

(2) *Periodicity.* The scup commercial and recreational sector ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review.* The Scup Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.,* more than once in 4 years or any 2 consecutive years), the Scup Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not as frequently exceeded.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that the scup stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded but may be conducted in conjunction with such reviews.

■ 33. Section 648.121 is revised to read as follows:

§ 648.121 Scup Annual Catch Target (ACT).

(a) The Scup Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the scup specification process. The Scup Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Scup Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

(2) *Periodicity.* ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review.* The Scup Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.120(b)(1) through (3).

■ 34. Section 648.122 is revised to read as follows:

§ 648.122 Scup specifications.

(a) *Commercial quota, recreational landing limits, research set-asides, and other specification measures.* The Scup Monitoring Committee shall recommend to the Demersal Species Committee of the MAFMC and the ASMFC through the specifications process, for use in conjunction with each ACL and ACT, a sector specific research set-aside, estimates of sector-related discards,

recreational harvest limit, and commercial quota, along with other measures, as needed, that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The measures to be considered by the Scup Monitoring Committee are as follows:

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed to achieve the specified exploitation rate.

(2) The commercial quota for each of the three periods specified in paragraph (c)(1) of this section for research quota.

(3) Possession limits for the Winter I and Winter II periods, including possession limits that result from potential rollover of quota from Winter I to Winter II. The possession limit is the maximum quantity of scup that is allowed to be landed within a 24–hour period (calendar day).

(4) Percent of landings attained at which the landing limit for the Winter I period will be reduced.

(5) All scup landed for sale in any state during a quota period shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested, except as provided in paragraph (c)(5) of this section.

(6) Minimum mesh size.

(7) Recreational possession limit set from a range of 0 to 50 scup to achieve the recreational harvest limit, set after the reduction for research quota.

(8) Recreational minimum fish size.

(9) Recreational season.

(10) Restrictions on gear.

(11) Season and area closures in the commercial fishery.

(12) Total allowable landings on an annual basis for a period not to exceed 3 years.

(13) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

(14) Modification of existing AM measures and ACT control rules utilized by the Scup Monitoring Committee.

(b) *Specification of fishing measures.* The Demersal Species Committee shall review the recommendations of the Scup Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure that the specified ACLs will not be exceeded. The MAFMC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC. After such review, NMFS will publish a proposed rule in the **Federal Register** to implement a commercial quota, specifying the amount of quota allocated to each of the three periods, possession limits for the Winter I and Winter II periods, including possession limits that result from potential rollover of quota from Winter I to Winter II, the percentage of landings attained during the Winter I fishery at which the possession limits will be reduced, a recreational harvest limit, and additional management measures for the commercial fishery. If the Regional Administrator determines that additional recreational measures are necessary to ensure that the sector ACL will not be exceeded, he or she will publish a proposed rule in the **Federal Register** to implement additional management measures for the recreational fishery. After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement annual measures.

(c) *Distribution of commercial quota.* (1) The annual commercial quota will be allocated into three periods, based on the following percentages:

Period	Percent
Winter I—January–April	45.11
Summer—May–October	38.95
Winter II—November–December	15.94

(2) The commercial quotas for each period will each be distributed to the coastal states from Maine through North Carolina on a coastwide basis.

(d) *Winter I and II commercial quota adjustment procedures.* The Regional Administrator will monitor the harvest of commercial quota for the Winter I period based on dealer reports, state data, and other available information and shall determine the total amount of scup landed during the Winter I period. In any year that the Regional Administrator determines that the landings of scup during Winter I are less than the Winter I quota for that year, he/she shall increase, through publication of a notification in the **Federal Register**, provided such rule complies with the requirements of the Administrative Procedure Act, the Winter II quota for that year by the amount of the Winter I under-harvest. The Regional Administrator shall also adjust, through publication of a notification in the **Federal Register**, the Winter II possession limits consistent with the amount of the quota increase, based on the possession limits established through the annual specifications-setting process.

(e) *Research quota.* See § 648.21(g).

■ 35. Section 648.123 is revised to read as follows:

§ 648.123 Scup accountability measures.

(a) *Commercial sector period closures.* The Regional Administrator will monitor the harvest of commercial quota for each quota period based on dealer reports, state data, and other available information and shall determine the date when the commercial quota for a period will be harvested. NMFS shall close the EEZ to fishing for scup by commercial vessels for the remainder of the indicated period by publishing notification in the **Federal Register** advising that, effective upon a specific date, the commercial quota for that period has been harvested, and notifying vessel and dealer permit holders that no commercial quota is available for landing scup for the remainder of the period.

(1) *Commercial ACL overage evaluation.* The commercial sector ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the commercial sector ACL has been exceeded.

(2) *Commercial landings overage repayment by quota period.* (i) All scup landed for sale in any state during a quota period shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested, except as provided in paragraph (a)(2)(iv) of this section, and irrespective of whether the commercial sector ACL is exceeded. Any current year landings in excess of the commercial quota in any quota period will be deducted from that quota period's annual quota in the following year as prescribed in paragraphs (a)(2)(ii) through (iii) of this section:

(ii) For the Winter I and Summer quota periods, landings in excess of the allocation will be deducted from the appropriate quota period for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through October 31 and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the period quotas for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period

concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the **Federal Register** announcing the restoration.

(iii) For the Winter II quota period, landings in excess of the allocation will be deducted from the Winter II period for the following year through notification in the **Federal Register** during July of the following year. The overage deduction will be based on landings information available for the Winter II period as of June 30 of the following year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the **Federal Register** announcing the restoration.

(iv) During a fishing year in which the Winter I quota period is closed prior to April 15, a state may apply to the Regional Administrator for authorization to count scup landed for sale in that state from April 15 through April 30 by state-only permitted vessels fishing exclusively in waters under the jurisdiction of that state against the Summer period quota. Requests to the Regional Administrator to count scup landings in a state from April 15 through April 30 against the Summer period quota must be made by letter signed by the principal state official with marine fishery management responsibility and expertise, or his/her designee, and must be received by the Regional Administrator no later than April 15. Within 10 working days following receipt of the letter, the Regional Administrator shall notify the appropriate state official of the disposition of the request.

(b) *Recreational landings sector closure.* The Regional Administrator will monitor recreational landings based on the best available data and shall determine if the recreational harvest limit has been met or exceeded. The determination will be based on observed landings and will not utilize projections of future landings. At such time that the available data indicate that the recreational harvest limit has been met or exceeded, the Regional Administrator shall publish notification in the **Federal Register** advising that, effective on a specific date, the scup recreational fishery in the EEZ shall be closed for remainder of the calendar year.

(1) *Recreational ACL overage evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational total catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of 2012, 2013, and 2014 recreational sector ACLs; and for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(2) *Recreational landing overage repayment.* If available data indicate that the recreational sector ACL has been exceeded and the landings have exceeded RHL, the exact amount of the landings overage in pounds will be deducted, as soon as possible, from a subsequent single fishing year recreational sector ACT.

(c) *Non-landing accountability measures, by sector.* In the event that a sector ACL has been exceeded and the overage has not been accommodated through landing-based AMs, then the exact amount by which the sector ACL was exceeded will be deducted, as soon as practicable, from a subsequent single fishing year applicable sector ACL through the specification process.

(d) *State/Federal disconnect AM.* If the total catch, allowable landing, commercial quotas and/or RHL measures adopted by the ASMFC Scup Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as is practicable to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures so no differential effects occur on Federal permit holders.

■ 36. Section 648.124 is revised to read as follows:

§ 648.124 Scup commercial season and commercial fishery area restrictions.

(a) *Southern Gear Restricted Area*—(1) *Restrictions.* From January 1 through March 15, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section must fish with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	N. lat.	W. long.
SGA1	39°20′	72°53′
SGA2	39°20′	72°28′
SGA3	38°00′	73°58′
SGA4	37°00′	74°43′
SGA5	36°30′	74°43′
SGA6	36°30′	75°03′
SGA7	37°00′	75°03′
SGA8	38°00′	74°23′
SGA1	39°20′	72°53′

(2) *Non-exempt species.* Unless otherwise specified in paragraph (d) of this section, the restrictions specified in paragraph (a)(1) of this section apply only to vessels in the Southern Gear Restricted Area that are fishing for or in possession of the following non-exempt species: *Loligo* squid; black sea bass; and silver hake (whiting).

(b) *Northern Gear Restricted Area 1*—(1) *Restrictions.* From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area 1 that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section must fish with nets of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Northern Gear Restricted Area 1 is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA 1

Point	N. lat.	W. long.
NGA1	41°00′	71°00′
NGA2	41°00′	71°30′
NGA3	40°00′	72°40′
NGA4	40°00′	72°05′

NORTHERN GEAR RESTRICTED AREA 1—Continued

Point	N. lat.	W. long.
NGA1	41°00′	71°00′

(2) *Non-exempt species.* Unless otherwise specified in paragraph (d) of this section, the restrictions specified in paragraph (b)(1) of this section apply only to vessels in the Northern Gear Restricted Area 1 that are fishing for, or in possession of, the following non-exempt species: *Loligo* squid; black sea bass; and silver hake (whiting).

(c) *Transiting.* Vessels that are subject to the provisions of the Southern and Northern GRAs, as specified in paragraphs (a) and (b) of this section, respectively, may transit these areas provided that trawl net codends on board of mesh size less than that specified in paragraphs (a) and (b) of this section are not available for immediate use and are stowed in accordance with the provisions of § 648.23(b).

(d) [Reserved]

(e) *Addition or deletion of exemptions.* The MAFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.130(a), additions or deletions to exemptions for fisheries other than scup. A fishery may be restricted or exempted by area, gear, season, or other means determined to be appropriate to reduce bycatch of scup.

(f) *Exempted experimental fishing.* The Regional Administrator may issue an exempted experimental fishing permit (EFP) under the provisions of § 600.745(b), consistent with paragraph (d)(2) of this section, to allow any vessel participating in a scup discard mitigation research project to engage in any of the following activities: Fish in the applicable gear restriction area; use fishing gear that does not conform to the regulations; possess non-exempt species specified in paragraphs (a)(2) and (b)(2) of this section; or engage in any other activity necessary to project operations for which an exemption from regulatory provision is required. Vessels issued an EFP must comply with all conditions and restrictions specified in the EFP.

(1) A vessel participating in an exempted experimental fishery in the Scup Gear Restriction Area(s) must carry an EFP authorizing the activity and any required Federal fishery permit on board.

(2) The Regional Administrator may not issue an EFP unless s/he determines that issuance is consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law and will not:

(i) Have a detrimental effect on the scup resource and fishery;

(ii) Cause the quotas for any species of fish for any quota period to be exceeded;

(iii) Create significant enforcement problems; or

(iv) Have a detrimental effect on the scup discard mitigation research project.

■ 37. Section 648.125 is revised to read as follows:

§ 648.125 Scup gear restrictions.

(a) *Trawl vessel gear restrictions*—(1) *Minimum mesh size.* No owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 200 lb (90.7 kg) or more of scup from May 1 through October 31, unless fishing with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, and all other nets are stowed in accordance with § 648.23(b)(1). For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. Scup on board these vessels must be stowed separately and kept readily available for inspection. Measurement of nets will conform with § 648.80(f).

(2) *Mesh-size measurement.* Mesh sizes will be measured according to the procedure specified in § 648.104(a)(2).

(3) *Net modification.* The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.124 and paragraph (a)(1) of this section shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net. However, one splitting strap and one bull rope (if present), consisting of line or rope no more than 3 inches (7.2 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of the net, and one rope no greater that 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head ropes are not considered part of the top of the regulated portion of a trawl net.

(4) *Mesh obstruction or constriction.* (i) The owner or operator of a fishing vessel subject to the minimum mesh restrictions in § 648.124 and in paragraph (a)(1) of this section shall not use any mesh construction, mesh configuration, or other means on, in, or attached to the top of the regulated portion of the net, as defined in paragraph (a)(3) of this section, if it obstructs or constricts the meshes of the net in any manner.

(ii) The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.124 and in paragraph (a)(1) of this section may not use a net capable of catching scup if the bars entering or exiting the knots twist around each other.

(5) *Stowage of nets.* The owner or operator of an otter trawl vessel retaining 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 200 lb (90.7 kg) or more of scup from May 1 through October 31, and subject to the minimum mesh requirements in paragraph (a)(1) of this section, and the owner or operator of a midwater trawl or other trawl vessel subject to the minimum size requirement in § 648.126, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that is stowed in conformance with one of the methods specified in § 648.23(b), and that can be shown not to have been in recent use, is considered to be not available for immediate use.

(6) *Roller gear.* The owner or operator of an otter trawl vessel issued a moratorium permit pursuant to § 648.4(a)(6) shall not use roller rig trawl gear equipped with rollers greater than 18 inches (45.7 cm) in diameter.

(7) *Procedures for changes.* The minimum net mesh and the threshold catch level at which it is required set forth in paragraph (a)(1) of this section, and the maximum roller diameter set forth in paragraph (a)(6) of this section, may be changed following the procedures in § 648.122.

(b) *Pot and trap gear restrictions.* Owners or operators of vessels subject to this part must fish with scup pots or traps that comply with the following:

(1) *Degradable hinges.* A scup pot or trap must have degradable hinges and fasteners made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16 inches (4.8 mm) diameter or smaller;

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.094 inches (2.4 mm) diameter or smaller.

(iv) The use of a single non-degradable retention device designed to prevent loss of the ghost panel after the degradable materials have failed is permitted provided the device does not impair the egress design function of the ghost panel by obstructing the opening or by preventing the panel from opening at such time that the degradable fasteners have completely deteriorated.

(2) *Escape vents.* (i) All scup pots or traps that have a circular escape vent with a minimum of 3.1 inches (7.9 cm) in diameter, or a square escape vent with a minimum of 2.25 inches (5.7 cm) for each side, or an equivalent rectangular escape vent.

(ii) The minimum escape vent size set forth in paragraph (b)(2)(i) of this section may be revised following the procedures in § 648.122.

(3) *Pot and trap identification.* Pots or traps used in fishing for scup must be marked with a code of identification that may be the number assigned by the Regional Administrator and/or the identification marking as required by the vessel's home port state.

■ 37. Section 648.126 is revised to read as follows:

§ 648.126 Scup minimum fish sizes.

(a) *Moratorium (commercially) permitted vessels.* The minimum size for scup is 9 inches (22.9 cm) TL for all vessels issued a moratorium permit under § 648.4(a)(6). If such a vessel is also issued a charter and party boat permit and is carrying passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat, then the minimum size specified in paragraph (b) of this section applies.

(b) *Party/Charter permitted vessels and recreational fishery participants.* The minimum size for scup is 10.5 inches (26.67 cm) TL for all vessels that do not have a moratorium permit, or for party and charter vessels that are issued a moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat.

(c) The minimum size applies to whole fish or any part of a fish found in possession, *e.g.,* fillets. These minimum sizes may be adjusted pursuant to the procedures in § 648.122.

■ 38. Section 648.127 is revised to read as follows:

§ 648.127 Scup recreational fishing season.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(6), and fishermen subject to the possession limit specified in § 648.128(a), may not possess scup, except from June 6 through September 27. This time period may be adjusted pursuant to the procedures in § 648.122.

■ 39. Section 648.128 is added to subpart H to read as follows:

§ 648.128 Scup possession restrictions.

(a) *Party/Charter and recreational possession limits.* No person shall possess more than 10 scup in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit. Persons aboard a commercial vessel that is not eligible for a scup moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a scup moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.122.

(b) If whole scup are processed into fillets, an authorized officer will convert the number of fillets to whole scup at the place of landing by dividing fillet number by 2. If scup are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole scup.

(c) Scup harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of scup on board by the number of persons aboard other than the captain and crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(d) Scup and scup parts harvested by a vessel with a moratorium or charter or party boat scup permit, or in or from the EEZ north of 35°15.3′ N. lat., may not be landed with the skin removed.

■ 40. Section 648.129 is added to subpart H to read as follows:

§ 648.129 Protection of threatened and endangered sea turtles.

This section supplements existing regulations issued to regulate incidental take of sea turtles under authority of the Endangered Species Act under 50 CFR parts 222 and 223. In addition to the measures required under those parts, NMFS will investigate the extent of sea turtle takes in flynet gear and, if deemed appropriate, may develop and certify a Turtle Excluder Device for that gear.

■ 41. Section 648.130 is added to subpart H to read as follows:

§ 648.130 Scup framework adjustments to management measures.

(a) *Within season management action.* See § 648.110(a).

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rules; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear restricted areas; gear requirements or prohibitions; permitting restrictions; recreational possession limits; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch; recreational harvest limits; annual specification quota setting process; FMP Monitoring Committee composition and process; description and identification of EFH (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; operator permits; any other commercial or recreational management measures; any other management measures currently included in the FMP; and set aside quota for scientific research.

(2) *MAFMC recommendation.* See § 648.110(a)(2)(i) through (iv).

(3) *NMFS action.* See § 648.110(a)(3)(i) through (iii).

(4) *Emergency actions.* See § 648.110(a)(4).

(b) [Reserved]

■ 42. Section 648.140 is revised to read as follows:

§ 648.140 Black sea bass Annual Catch Limit (ACL).

(a) The Black Sea Bass Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational scup fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

(1) *Sector allocations.* The commercial and recreational fishing sector ACLs will be established consistent with the allocation guidelines contained in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan.

(2) *Periodicity.* The black sea bass commercial and recreational sector ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review.* The Black Sea Bass Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.,* more than once in 4 years or any 2 consecutive years), the Black Sea Bass Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not exceeded as frequently.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that the black sea bass stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded but may be conducted in conjunction with such reviews.

■ 43. Section 648.141 is revised to read as follows:

§ 648.141 Black sea bass Annual Catch Target (ACT).

(a) The Black Sea Bass Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the black sea bass specification process. The Black Sea Bass Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Black Sea Bass Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

(2) *Periodicity.* ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(b) *Performance review.* The Black Sea Bass Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.140(b)(1)–(3).

■ 44. Section 648.142 is revised to read as follows:

§ 648.142 Black sea bass specifications.

(a) *Commercial quota, recreational landing limit, research set-aside, and other specification measures.* The Black Sea Bass Monitoring Committee will recommend to the Demersal Species Committee of the MAFMC and the ASMFC, through the specification process, for use in conjunction with the ACL and ACT, sector-specific research set-asides, estimates of the sector-related discards, a recreational harvest limit, a commercial quota, along with other measures, as needed, that are projected to ensure the sector-specific ACL for an upcoming year or years will not be exceeded. The following measures are to be consisted by the Black Sea Bass Monitoring Committee:

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed.

(2) A commercial quota, allocated annually.

(3) A commercial possession limit for all moratorium vessels, with the provision that these quantities be the maximum allowed to be landed within a 24-hour period (calendar day).

(4) Commercial minimum fish size.

(5) Minimum mesh size in the codend or throughout the net and the catch threshold that will require compliance with the minimum mesh requirement.

(6) Escape vent size.

(7) A recreational possession limit set after the reduction for research quota.

(8) Recreational minimum fish size.

(9) Recreational season.

(10) Restrictions on gear other than otter trawls and pots or traps.

(11) Total allowable landings on an annual basis for a period not to exceed 3 years.

(12) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

(13) Modification of the existing AM measures and ACT control rules utilized by the Black Sea Bass Monitoring Committee.

(b) *Specification fishing measures.* The Demersal Species Committee shall review the recommendations of the Black Sea Bass Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the MAFMC with respect to the measures necessary to assure that the ACLs are not exceeded. The MAFMC shall review these recommendations and, based on the recommendations and public comment, make recommendations to the Regional Administrator with respect to the measures necessary to assure that sector ACLs are not exceeded. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the final rule. The Regional Administrator will review these recommendations and any recommendations of the ASMFC. After such review, the Regional Administrator will publish a proposed rule in the **Federal Register** to implement a commercial quota, a recreational harvest limit, and additional management measures for the commercial fishery. If the Regional Administrator determines that additional recreational measures are necessary to assure that the recreational sector ACL is not exceeded, he or she will publish a proposed rule in the **Federal Register** to implement additional management measures for the recreational fishery. After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement the measures necessary to ensure that recreational sector ACL is not exceeded.

(c) *Distribution of annual commercial quota.* The black sea bass commercial quota will be allocated on a coastwide basis.

(d) *Research quota.* See § 648.21(g).

■ 45. Section 648.143 is revised to read as follows:

§ 648.143 Black sea bass Accountability Measures.

(a) *Commercial sector fishery closure.* The Regional Administrator will monitor the harvest of commercial quota based on dealer reports, state data, and other available information. All black

sea bass landed for sale in the states from North Carolina through Maine by a vessel with a moratorium permit issued under § 648.4(a)(7) shall be applied against the commercial annual coastwide quota, regardless of where the black sea bass were harvested. All black sea bass harvested north of 35°15.3′ N. lat., and landed for sale in the states from North Carolina through Maine by any vessel without a moratorium permit and fishing exclusively in state waters, will be counted against the quota by the state in which it is landed, pursuant to the FMP for the black sea bass fishery adopted by the ASMFC. The Regional Administrator will determine the date on which the annual coastwide quota will have been harvested; beginning on that date and through the end of the calendar year, the EEZ north of 35°15.3′ N. lat. will be closed to the possession of black sea bass. The Regional Administrator will publish notification in the **Federal Register** advising that, upon, and after, that date, no vessel may possess black sea bass in the EEZ north of 35°15.3′ N. lat. during a closure, nor may vessels issued a moratorium permit land black sea bass during the closure. Individual states will have the responsibility to close their ports to landings of black sea bass during a closure, pursuant to the FMP for the black sea bass fishery adopted by the ASMFC.

(1) *Commercial ACL overage evaluation.* The commercial sector ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the commercial sector ACL has been exceeded.

(2) *Commercial landings overage repayment.* Landings in excess of the annual coastwide quota will be deducted from the quota allocation for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through September 30, and landings for the previous calendar year were not included when the overage deduction was made in the final rule that established the annual coastwide quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the **Federal Register** announcing the restoration.

(b) *Recreational landings sector closure.* The Regional Administrator will monitor recreational landings based on the best available data and shall determine if the recreational harvest limit has been met or exceeded. The determination will be based on observed landings and will not utilize projections of future landings. At such time that the available data indicate that the recreational harvest limit has been met or exceeded, the Regional Administrator shall publish notification in the **Federal Register** advising that, effective on a specific date, the black sea bass recreational fishery in the EEZ shall be closed for remainder of the calendar year.

(1) *Recreational ACL overage evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational total catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs and, for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(2) *Recreational landing overage repayment.* If available data indicate that the recreational sector ACL has been exceeded and the landings have exceeded the recreational harvest limit, the exact amount of the landings overage (in pounds) will be deducted, as soon as possible, from a subsequent single fishing year recreational sector ACT.

(c) *Non-landing accountability measures, by sector.* In the event that a sector ACL has been exceeded and the overage has not been accommodated through landings-based AMs, then the exact amount of the overage in pounds by which the sector ACL was exceeded will be deducted, as soon as possible, from a subsequent single fishing year applicable sector ACL.

(d) *State/Federal disconnect AM.* If the total catch, allowable landings, commercial quotas, and/or recreational harvest limit measures adopted by the ASMFC Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as is practicable to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures so no differential effects occur to Federal permit holders.

■ 46. Section 648.144 is revised to read as follows:

§ 648.144 Black sea bass gear restrictions.

(a) *Trawl gear restrictions*—(1) *General.* (i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 500 lb (226.8 kg) or more of black sea bass from January 1 through March 31, or 100 lb (45.4 kg) or more of black sea bass from April 1 through December 31, must fish with nets that have a minimum mesh size of 4.5-inch (11.43-cm) diamond mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with less than 75 meshes, the entire net must have a minimum mesh size of 4.5-inch (11.43-cm) diamond mesh throughout.

(ii) Mesh sizes shall be measured pursuant to the procedure specified in § 648.104(a)(2).

(2) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net except that one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.6 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net.

(3) *Mesh obstruction or constriction.* (i) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(2) of this section, that obstructs the meshes of the net in any manner, or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than

the minimum established pursuant to paragraph (a)(1)(i) of this section.

(ii) No person on any vessel may possess or fish with a net capable of catching black sea bass in which the bars entering or exiting the knots twist around each other.

(4) *Stowage of nets.* Otter trawl vessels subject to the minimum mesh-size requirement of paragraph (a)(1)(i) of this section may not have ''available for immediate use'' any net or any piece of net that does not meet the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size requirement. A net that is stowed in conformance with one of the methods specified in § 648.23(b) and that can be shown not to have been in recent use, is considered to be not ''available for immediate use.''

(5) *Roller gear.* Rollers used in roller rig or rock hopper trawl gear shall be no larger than 18 inches (45.7 cm) in diameter.

(b) *Pot and trap gear restrictions*—(1) *Gear marking.* The owner of a vessel issued a black sea bass moratorium permit must mark all black sea bass pots or traps with the vessel's USCG documentation number or state registration number.

(2) All black sea bass traps or pots must have two escape vents placed in lower corners of the parlor portion of the pot or trap that each comply with one of the following minimum size requirements: 1.375 inches by 5.75 inches (3.49 cm by 14.61 cm); a circular vent of 2.5 inches (6.4 cm) in diameter; or a square vent with sides of 2 inches (5.1 cm), inside measure; however, black sea bass traps constructed of wooden laths instead may have escape vents constructed by leaving spaces of at least 1.375 inches (3.49 cm) between two sets of laths in the parlor portion of the trap. These dimensions for escape vents and lath spacing may be adjusted pursuant to the procedures in § 648.140.

(3) *Ghost panel.* (i) Black sea bass traps or pots must contain a ghost panel affixed to the trap or pot with degradable fasteners and hinges. The opening to be covered by the ghost panel must measure at least 3.0 inches (7.62 cm) by 6.0 inches (15.24 cm). The ghost panel must be affixed to the pot or trap with hinges and fasteners made of one of the following degradable materials:

(A) Untreated hemp, jute, or cotton string of 3/16 inches (4.8 mm) diameter or smaller; or

(B) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(C) Ungalvanized or uncoated iron wire of 0.094 inches (2.4 mm) diameter or smaller.

(ii) The use of a single non-degradable retention device designed to prevent loss of the ghost panel after the degradable materials have failed is permitted, provided the device does not impair the egress design function of the ghost panel by obstructing the opening or by preventing the panel from opening at such time that the degradable fasteners have completely deteriorated.

■ 47. Section 648.145 is revised to read as follows:

§ 648.145 Black sea bass possession limit.

(a) No person shall possess more than 25 black sea bass in, or harvested from the EEZ unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit. Persons aboard a commercial vessel that is not eligible for a black sea bass moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.142.

(b) If whole black sea bass are processed into fillets, an authorized officer will convert the number of fillets to whole black sea bass at the place of landing by dividing fillet number by two. If black sea bass are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole black sea bass.

(c) Black sea bass harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of black sea bass on board by the number of persons aboard, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

(d) Owners or operators of otter trawl vessels issued a moratorium permit under § 648.4(a)(7) and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh requirements specified in § 648.144(a) and that are not stowed in accordance with § 648.144(a)(4) may not retain more than 500 lb (226.8 kg) of black sea bass from January 1 through March 31, or more than 100 lb (45.4 kg) of black sea bass from April 1 through December 31. Black sea bass on board these vessels shall be stored so as to be readily available for inspection in a standard 100-lb (45.4-kg) tote.

■ 48. Section 648.146 is revised to read as follows:

§ 648.146 Black sea bass recreational fishing season.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may possess black sea bass from May 22 through October 11 and November 1 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.142.

■ 49. Section 648.147 is revised to read as follows:

§ 648.147 Black sea bass minimum fish sizes.

(a) *Moratorium (commercially) permitted vessels.* The minimum size for black sea bass is 11 inches (27.94 cm) total length for all vessels issued a moratorium permit under § 648.4(a)(7) that fish for, possess, land or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35°15.3′ N. Lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canadian border. The minimum size may be adjusted for commercial vessels pursuant to the procedures in § 648.142.

(b) *Party/Charter permitted vessels and recreational fishery participants.* The minimum fish size for black sea bass is 12.5 inches (31.75 cm) TL for all vessels that do not qualify for a moratorium permit, and for party boats holding a moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a moratorium permit, if fishing with more than three crew members.

(c) The minimum size in this section applies to the whole fish or any part of a fish found in possession (*e.g.,* fillets), except that party or charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if skin remains on the fillet and all other state requirements are met.

■ 50. Section 648.148 is added to subpart I to read as follows:

§ 648.148 Special management zones.

The recipient of a U.S. Army Corps of Engineers permit for an artificial reef, fish attraction device, or other modification of habitat for purposes of fishing may request that an area

surrounding and including the site be designated by the MAFMC as a special management zone (SMZ). The MAFMC may prohibit or restrain the use of specific types of fishing gear that are not compatible with the intent of the artificial reef or fish attraction device or other habitat modification within the SMZ. The establishment of an SMZ will be effected by a regulatory amendment, pursuant to the following procedure:

(a) A SMZ monitoring team comprised of members of staff from the MAFMC, NMFS Northeast Region, and NMFS Northeast Fisheries Science Center will evaluate the request in the form of a written report, considering the following criteria:

(1) Fairness and equity;

(2) Promotion of conservation;

(3) Avoidance of excessive shares;

(4) Consistency with the objectives of Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, the Magnuson-Stevens Act, and other applicable law;

(5) The natural bottom in and surrounding potential SMZs; and

(6) Impacts on historical uses.

(b) The MAFMC Chairman may schedule meetings of MAFMC's industry advisors and/or the SSC to review the report and associated documents and to advise the MAFMC. The MAFMC Chairman may also schedule public hearings.

(c) The MAFMC, following review of the SMZ monitoring teams's report, supporting data, public comments, and other relevant information, may recommend to the Regional Administrator that a SMZ be approved. Such a recommendation will be accompanied by all relevant background information.

(d) The Regional Administrator will review the MAFMC's recommendation. If the Regional Administrator concurs in the recommendation, he or she will publish a proposed rule in the **Federal Register** in accordance with the recommendations. If the Regional Administrator rejects the MAFMC's recommendation, he or she shall advise the MAFMC in writing of the basis for the rejection.

(e) The proposed rule to establish a SMZ shall afford a reasonable period for public comment. Following a review of public comments and any information or data not previously available, the Regional Administrator will publish a final rule if he or she determines that the establishment of the SMZ is supported by the substantial weight of evidence in the record and consistent with the Magnuson-Stevens Act and other applicable law.

■ 51. Section 648.149 is added to subpart I to read as follows:

§ 648.149 Black sea bass framework adjustments to management measures.

(a) *Within season management action.* See § 648.110(a).

(1) *Adjustment process.* See § 648.110(a)(1).

(2) *MAFMC recommendation.* See § 648.110(a)(2)(i) through (iv).

(3) *Regional Administrator action.* See § 648.110(a)(3)(i) through (iii).

(4) *Emergency actions.* See § 648.110(a)(4).

(b) [Reserved]

■ 52. Section 648.160 is revised to read as follows:

§ 648.160 Bluefish Annual Catch Limit (ACL).

(a) The Bluefish Monitoring Committee shall recommend to the MAFMC an ACL for the bluefish fishery, which shall be equal to the ABC recommended by the SSC.

(1) *Periodicity.* The bluefish fishery ACL may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(2) [Reserved]

(b) *Performance review.* The Bluefish Monitoring Committee shall conduct a detailed review of fishery performance relative to the ACL at least every 5 years.

(1) If the ACL is exceeded with a frequency greater than 25 percent (*i.e.,* more than once in 4 years or any 2 consecutive years), the Bluefish Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure the ACL is not exceeded as frequently.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following the determination that the bluefish stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

■ 53. Section 648.161 is revised to read as follows:

§ 648.161 Bluefish Annual Catch Targets (ACTs).

(a) The Bluefish Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the bluefish specification process. The Bluefish Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* The sum of the commercial and recreational sector-specific ACTs shall be less than or equal to the fishery level ACL. The Bluefish Monitoring Committee shall recommend any reduction in catch necessary to address management uncertainty, consistent with paragraph (a) of this section. A total of 83 percent of the fishery-level ACT will be allocated to the recreational fishery. A total of 17 percent of the fishery-level ACT will be allocated to the commercial fishery.

(2) *Periodicity.* ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(b) *Performance review.* The Bluefish Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.160(b)(1) through (3).

■ 54. Section 648.162 is revised to read as follows:

§ 648.162 Bluefish specifications.

(a) *Recommended measures.* Based on the annual review and requests for research quota as described in paragraph (h) of this section, the Bluefish Monitoring Committee shall recommend to the Coastal Migratory Committee of the MAFMC and the ASMFC the following measures to ensure that the ACL specified by the process outlined in § 648.160(a) will not be exceeded:

(1) A fishery-level ACT;

(2) Research quota set from a range of 0 to 3 percent of TALs;

(3) Commercial minimum fish size;

(4) Minimum mesh size;

(5) Recreational possession limit set from a range of 0 to 20 bluefish;

(6) Recreational minimum fish size;

(7) Recreational season;

(8) Restrictions on gear other than otter trawls and gill nets;

(9) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports; and

(10) Modification of existing AM measures and ACT control rules utilized by the Bluefish Monitoring Committee.

(b) *TAL*—(1) *Recreational harvest limit.* If research quota is specified as

described in paragraph (g) of this section, the recreational harvest limit will be based on the TAL remaining after the deduction of the research quota.

(2) *Commercial quota.* If 17 percent of the TAL is less than 10.5 million lb (4.8 million kg) and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.5 million lb (4.8 million kg) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the TAL. If research quota is specified as described in paragraph (g) of this section, the commercial quota will be based on the TAL remaining after the deduction of the research quota.

(c) *Annual fishing measures.* The MAFMC's Coastal Migratory Committee shall review the recommendations of the Bluefish Monitoring Committee. Based on these recommendations and any public comment, the Coastal Migratory Committee shall recommend to the MAFMC measures necessary to ensure that the ACL will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator by September 1 measures necessary to ensure that the applicable ACL will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC. After such review, NMFS will publish a proposed rule in the **Federal Register** as soon as practicable, to implement an ACL, ACTs, research quota, a coastwide commercial quota, individual state commercial quotas, a recreational harvest limit, and additional management measures for the commercial and recreational fisheries to ensure that the ACL will not be exceeded. After considering public comment, NMFS will publish a final rule in the **Federal Register**.

(d) *Distribution of annual commercial quota.*—(1) The annual commercial quota will be distributed to the states, based upon the following percentages; state each followed by its allocation in parentheses: ME (0.6685); NH (0.4145); MA (6.7167); RI (6.8081); CT (1.2663); NY (10.3851); NJ (14.8162) DE (1.8782); MD (3.0018); VA (11.8795); NC (32.0608); SC (0.0352); GA (0.0095); and FL (10.0597). Note: The sum of all state allocations does not add to 100 because of rounding.

(2) [Reserved]

(e) *Quota transfers and combinations.* Any state implementing a state commercial quota for bluefish may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for bluefish may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for bluefish must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested;

(ii) The transfer addresses an unforeseen variation or contingency in the fishery; and

(iii) The transfer is consistent with the objectives of the Bluefish FMP and Magnuson-Stevens Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notification that the Regional Administrator has disapproved the previous request or when notification of the approval of the transfer or combination has been published in the **Federal Register**.

(f) Based upon any changes in the landings data available from the states for the base years 1981–89, the ASMFC and the MAFMC may recommend to the Regional Administrator that the states' shares specified in paragraph (d)(1) of this section be revised. The MAFMC's and the ASMFC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendation. The Regional Administrator shall review the recommendation of the ASMFC and the MAFMC. After such review, NMFS will publish a proposed rule in the **Federal Register** to implement a revision in the state shares. After considering public comment, NMFS will publish a final rule in the **Federal Register** to implement the changes in allocation.

(g) *Research quota.* See § 648.21(g).

■ 55. Section 648.163 is revised to read as follows:

§ 648.163 Bluefish Accountability Measures (AMs).

(a) *ACL overage evaluation.* The ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded.

(b) *Commercial sector EEZ closure.* NMFS shall close the EEZ to fishing for bluefish by commercial vessels for the remainder of the calendar year by publishing notification in the **Federal Register** if the Regional Administrator determines that the inaction of one or more states will cause the ACL specified in § 648.160(a) to be exceeded, or if the commercial fisheries in all states have been closed. NMFS may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the ACL to be exceeded.

(c) *State commercial landing quotas.* The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. NMFS shall publish notification in the **Federal Register** advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing bluefish in that state.

(1) *Commercial landings overage repayment.* All bluefish landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the bluefish were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year, irrespective of whether the fishery-level ACL is exceeded. If a state has increased or reduced quota through the transfer process described in § 648.162, then any

overage will be measured against that state's final adjusted quota.

(2) If there is a quota overage at the end of the fishing year among states involved in the combination of quotas, the overage will be deducted from the following year's quota for each of the states involved in the combined quota, irrespective of whether the fishery-level ACL is exceeded. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in § 648.162(d)(1).

(d) *Recreational landings AM when the ACL is exceeded and no sector-to-sector transfer of allowable landings has occurred.* If the fishery-level ACL is exceeded and landings from the recreational fishery are determined to be the sole cause of the overage, and no transfer between the commercial and recreational sector was made for the fishing year, as outlined in § 648.162(b)(2), then the exact amount, in pounds, by which the ACL was exceeded will be deducted, as soon as possible, from a subsequent single fishing year recreational ACT.

(e) *AM for when the ACL is exceeded and a sector-to-sector transfer of allowable landings has occurred.* If the fishery-level ACL is exceeded and landings from the recreational fishery and/or the commercial fishery are determined to have caused the overage, and a transfer between the commercial and recreational sector has occurred for the fishing year, as outlined in § 648.162(b)(2), then the amount transferred between the recreational and commercial sectors may be reduced by the ACL overage amount (pound-for-pound repayment) in a subsequent, single fishing year if the Bluefish Monitoring Committee determines that the ACL overage was the result of too liberal a landings transfer between the two sectors.

(f) *Non-landing AMs.* In the event that the ACL has been exceeded and the overage has not been accommodated through the AM measures in paragraphs (a) through (d) of this section, then the exact amount, in pounds, by which the ACL was exceeded shall be deducted, as soon as possible, from a subsequent, single fishing year ACL.

(g) *State/Federal disconnect AM.* If the total catch, allowable landings, commercial quotas, and/or recreational harvest limit measures adopted by the ASMFC Bluefish Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as is practicable to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures so no differential effects occur to Federal permit holders.

■ 56. Section 648.164 is revised to read as follows:

§ 648.164 Bluefish possession restrictions.

(a) No person shall possess more than 15 bluefish in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a bluefish commercial permit or is issued a bluefish dealer permit. Persons aboard a vessel that is not issued a bluefish commercial permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a bluefish commercial permit are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(b) Bluefish harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of bluefish on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

■ 57. Section 648.165 is revised to read as follows:

§ 648.165 Bluefish minimum fish sizes.

If the MAFMC determines through its annual review or framework adjustment process that minimum fish sizes are necessary to ensure that the fishing mortality rate is not exceeded, or to attain other FMP objectives, such measures will be enacted through the procedure specified in § 648.162(c) or 648.167.

■ 58. Section 648.166 is added to subpart J to read as follows:

§ 648.166 Bluefish gear restrictions.

If the MAFMC determines through its annual review or framework adjustment process that gear restrictions are necessary to ensure that the ACL is not exceeded, or to attain other FMP objectives, such measures, subject to the gear other than trawls and gillnets restrictions in § 648.162 regarding specifications, will be enacted through the procedure specified in § 648.162(c) or 648.167.

■ 59. Section 648.167 is added to subpart J to read as follows:

§ 648.167 Bluefish framework adjustment to management measures.

(a) *Within-season management action.* The MAFMC may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Bluefish FMP.

(1) *Adjustment process.* After a management action has been initiated, the MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC shall provide the public with advance notice of the availability of both the proposals and the analysis and the opportunity to comment on them prior to and at the second MAFMC meeting. The MAFMC's recommendation on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions; recreational possession limit; recreational season; closed areas; commercial season; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports and/or industry-funded observers or observer set-aside programs); and any other management measures currently included in the FMP. Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

(2) *MAFMC recommendation.* After developing management actions and receiving public testimony, the MAFMC shall make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, the MAFMC must consider at least the following

factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the MAFMC's recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Action by NMFS.* If the MAFMC's recommendation includes adjustments or additions to management measures and, after reviewing the MAFMC's recommendation and supporting information:

(i) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the MAFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the MAFMC's recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

■ 60. Section 648.230 is revised to read as follows:

§ 648.230 Spiny dogfish Annual Catch Limits (ACLs).

(a) The Spiny Dogfish Monitoring Committee shall recommend to the Joint Spiny Dogfish Committee, an ACL for the commercial spiny dogfish fishery, which shall equal to the domestic ABC (*i.e.,* the ABC minus Canadian catch) recommended by the SSC as specified in § 648.20.

(1) *Periodicity.* The spiny dogfish ACL may be established on an annual basis for up to 5 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(2) [Reserved]

(b) *Performance review.* The Spiny Dogfish Monitoring Committee shall conduct a detailed review of fishery performance relative to the ACL at least every 5 years.

(1) If an ACL is exceeded with a frequency greater than 25 percent (*i.e.,* more than once in 4 years or any 2 consecutive years), the Spiny Dogfish Monitoring Committee will review fishery performance information and make recommendations to the Councils for changes in measures intended to ensure ACLs are not exceeded as frequently.

(2) The Councils may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that the spiny dogfish stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

■ 61. Section 648.231 is revised to read as follows:

§ 648.231 Spiny dogfish Annual Catch Target (ACT) and Total Allowable Level of Landings (TAL).

(a) The Spiny Dogfish Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend an ACT and a TAL for the fishery as part of the spiny dogfish specification process specified in § 648.232. The Spiny Dogfish Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, domestic commercial and recreational discards, and any additional relevant information considered in the ACT and TAL recommendation process.

(1) The ACT shall be identified as less than or equal to the ACL.

(2) The Spiny Dogfish Monitoring Committee shall recommend a TAL to the Joint Spiny Dogfish Committee, which accounts for domestic commercial and recreational discards (ACT minus domestic dead discards). The TAL is equivalent to the annual coastwide commercial quota.

(b) *Periodicity.* The TAL may be established on an annual basis for up to 5 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(c) *Performance review.* The Spiny Dogfish Monitoring Committee shall conduct a detailed review of fishery performance relative to TALs in conjunction with any ACL performance review, as outlined in § 648.230(b).

■ 62. Reserved § 648.232 is amended by revising the section heading and adding text to read as follows:

§ 648.232 Spiny dogfish specifications.

(a) *Commercial quota and other specification measures.* The Spiny Dogfish Monitoring Committee shall recommend to the Joint Spiny Dogfish Committee a TAL (*i.e.,* annual coastwide commercial quota) and any other measures, including those in paragraphs (a)(1) through (7) of this section, that are necessary to ensure that the commercial ACL will not be exceeded in any fishing year (May 1–April 30), for a period of 1–5 fishing years. The measures that may be recommended include, but are not limited to:

(1) Minimum or maximum fish sizes;

(2) Seasons;

(3) Mesh size restrictions;

(4) Trip limits;

(5) Changes to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports;

(6) Other gear restrictions; and

(7) Changes to AMs and ACT control rules.

(b) *Joint Spiny Dogfish Committee recommendation.* The Councils' Joint Spiny Dogfish Committee shall review the recommendations of the Spiny Dogfish Monitoring Committee. Based on these recommendations and any public comments, the Joint Spiny Dogfish Committee shall recommend to the Councils a TAL, and possibly other measures, including those specified in paragraphs (a)(1) through (7) of this section, necessary to ensure that the ACL specified in § 648.230 will not be exceeded in any fishing year (May 1–April 30), for a period of 1–5 fishing years.

(c) *Council recommendations.* (1) The Councils shall review these recommendations and, based on the recommendations and any public comments, recommend to the Regional Administrator a TAL and other measures necessary to ensure that the ACL specified in § 648.230 will not be exceeded in any fishing year, for a period of 1–5 fishing years. The Councils' recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and other

impacts of the recommendations. The Regional Administrator shall initiate a review of these recommendations and may modify the recommended quota and other management measures to ensure that the ACL specified in § 648.230 will not be exceeded in any fishing year, for a period of 1–5 fishing years. The Regional Administrator may modify the Councils' recommendations using any of the measures that were not rejected by both Councils.

(2) After such review, NMFS shall publish a proposed rule in the **Federal Register** specifying a TAL, adjustments to ACL, ACT, and TAL resulting from the accountability measures specified in § 648.233, and other measures necessary to ensure that the ACL will not be exceeded in any fishing year, for a period of 1–5 fishing years. After considering public comments, NMFS shall publish a final rule in the **Federal Register** to implement the TAL and other measures.

(d) [Reserved]

(e) *Distribution of annual quota.* (1) The TAL (*i.e.,* annual coastwide commercial quota) specified according to the process outlined section § 648.231 shall be allocated between two semi-annual quota periods as follows: May 1 through October 31 (57.9 percent); and November 1 through April 30 (42.1 percent).

(2) All spiny dogfish landed for a commercial purpose in the states from Maine through Florida shall be applied against the applicable semi-annual commercial quota, regardless of where the spiny dogfish were harvested.

■ 63. Reserved § 648.233 is amended by revising the section heading and adding text to read as follows:

§ 648.233 Spiny dogfish Accountability Measures (AMs).

(a) *Commercial EEZ closure.* The Regional Administrator shall determine the date by which the quota for each semi-annual period described in § 648.232(e)(1) will be harvested and shall close the EEZ to fishing for spiny dogfish on that date for the remainder of that semi-annual period by publishing notification in the **Federal Register**. Upon the closure date, and for the remainder of the semi-annual quota period, no vessel may fish for or possess spiny dogfish in the EEZ, nor may vessels issued a spiny dogfish permit under this part land spiny dogfish, nor may dealers issued a Federal permit purchase spiny dogfish from vessels issued a spiny dogfish permit under this part.

(b) *ACL overage evaluation.* The ACL will be evaluated based on a single-year examination of total catch (including both landings and dead discards) to determine if the ACL has been exceeded.

(c) *Overage repayment.* In the event that the ACL has been exceeded in a given fishing year, the exact amount in pounds by which the ACL was exceeded shall be deducted, as soon as possible from a subsequent single fishing year ACL.

■ 64. Section 648.235 is revised to read as follows:

§ 648.235 Spiny dogfish possession and landing restrictions.

(a) *Quota Period 1.* From May 1 through October 31, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 3,000 lb (1.36 mt) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

(b) *Quota Period 2.* From November 1 through April 30, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 3,000 lb (1.36 mt) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

(c) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 600, subpart N, of this chapter.

§ 648.237 [Removed and reserved]

■ 65. Section 648.237 is removed and reserved.

§ 648.238 [Added and reserved]

■ 66. Section 648.238 is added to subpart L and reserved.

■ 67. Section 648.239 is added to subpart L to read as follows:

§ 648.239 Spiny dogfish framework adjustments to management measures.

(a) *Within season management action.* The Councils may, at any time, initiate action to add or adjust management measures if they find that action is necessary to meet or be consistent with the goals and objectives of the Spiny Dogfish FMP.

(1) *Adjustment process.* After the Councils initiate a management action, they shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis for comment prior to, and at, the second Council meeting. The Councils' recommendation on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear requirements, restrictions, or prohibitions (including, but not limited to, mesh size restrictions and net limits); regional gear restrictions; permitting restrictions, and reporting requirements; recreational fishery measures (including possession and size limits and season and area restrictions); commercial season and area restrictions; commercial trip or possession limits; fin weight to spiny dogfish landing weight restrictions; onboard observer requirements; commercial quota system (including commercial quota allocation procedures and possible quota set-asides to mitigate bycatch, conduct scientific research, or for other purposes); recreational harvest limit; annual quota specification process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat; description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional season restrictions (including option to split seasons); restrictions on vessel size (length and GRT) or shaft horsepower; target quotas; measures to mitigate marine mammal entanglements and interactions; regional management; changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside program; any other management measures currently included in the Spiny Dogfish FMP; and measures to regulate aquaculture projects. Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

(2) *Councils' recommendation.* After developing management actions and receiving public testimony, the Councils shall make a recommendation approved by a majority of each Council's members, present and voting, to the Regional Administrator. The Councils' recommendation must include supporting rationale, an analysis of impacts and, if management measures are recommended, a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, they must

consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Councils' recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule;

(3) *NMFS action.* If the Councils' recommendation includes adjustments or additions to management measures, then:

(i) If NMFS concurs with the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (b)(2) of this section, then the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures will be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the Councils will be notified in writing of the reasons for the non-concurrence.

(iv) Framework actions can be taken only in the case where both Councils approve the proposed measure.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

■ 68. Section 648.290 is revised to read as follows:

§ 648.290 Tilefish Annual Catch Limit (ACL).

(a) The Tilefish Monitoring Committee shall recommend to the MAFMC an ACL for the commercial tilefish fishery, which shall be equal to the ABC recommended by the SSC.

(1) [Reserved]

(2) *Periodicity.* The tilefish commercial ACL may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(b) *Performance review.* The Tilefish Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If the ACL is exceeded with a frequency greater than 25 percent (*i.e.,* more than once in 4 years or in any 2 consecutive years), the Tilefish Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not as frequently exceeded.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that the tilefish stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

■ 69. Section 648.291 is revised to read as follows:

§ 648.291 Tilefish Annual Catch Target (ACT).

(a) The Tilefish Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend an ACT as part of the tilefish specification process. The Tilefish Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* The ACT shall be less than or equal to the ACL. The Tilefish Monitoring Committee shall include the fishing mortality associated with the recreational fishery in its ACT recommendations only if this source of mortality has not already been accounted for in the ABC recommended by the SSC. The Tilefish Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

(2) *Periodicity.* ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(b) *Performance review.* The Tilefish Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.290(b)(1) through (3).

■ 70. Section 648.292 is added to read as follows:

§ 648.292 Tilefish specifications.

The fishing year is the 12-month period beginning with November 1, annually.

(a) *Annual specification process.* The Tilefish Monitoring Committee shall review the ABC recommendation of the SSC, tilefish landings and discards information, and any other relevant available data to determine if the ACL, ACT, or total allowable landings (TAL) requires modification to respond to any changes to the stock's biological reference points or to ensure that the rebuilding schedule is maintained. The Monitoring Committee will consider whether any additional management measures or revisions to existing measures are necessary to ensure that the TAL will not be exceeded. Based on that review, the Monitoring Committee will recommend ACL, ACT, and TAL to the Tilefish Committee of the MAFMC. Based on these recommendations and any public comment received, the Tilefish Committee shall recommend to the MAFMC the appropriate ACL, ACT, TAL, and other management measures for a single fishing year or up to 3 years. The MAFMC shall review these recommendations and any public comments received, and recommend to the Regional Administrator, at least 120 days prior to the beginning of the next fishing year, the appropriate ACL, ACT, TAL, the percentage of TAL allocated to research quota, and any management measures to ensure that the TAL will not be exceeded, for the next fishing year, or up to 3 fishing years. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations, and after such review, NMFS will publish a proposed rule in the **Federal Register** specifying the annual ACL, ACT, TAL and any management measures to ensure that the TAL will not be exceeded for the upcoming fishing year or years. After considering public comments, NMFS will publish a final rule in the **Federal Register** to implement the ACL, ACT, TAL and any management measures. The previous year's specifications will

remain effective unless revised through the specification process and/or the research quota process described in paragraph (e) of this section. NMFS will issue notification in the **Federal Register** if the previous year's specifications will not be changed.

(b) *TAL.* (1) The TAL for each fishing year will be 1.995 million lb (905,172 kg) unless modified pursuant to paragraph (a) of this section.

(2) The sum of the TAL and estimated discards shall be less than or equal to the ACT.

(c) *TAL allocation.* For each fishing year, up to 3 percent of the TAL may be set aside for the purpose of funding research. Once a research amount, if any, is set aside, the TAL will first be reduced by 5 percent to adjust for the incidental catch. The remaining TAL will be allocated to the individual IFQ permit holder as described in § 648.294(a).

(d) *Adjustments to the quota.* If the incidental harvest exceeds 5 percent of the TAL for a given fishing year, the incidental trip limit of 500 lb (226.8 kg) may be reduced in the following fishing year. If an adjustment is required, a notification of adjustment of the quota will be published in the **Federal Register**.

(e) *Research quota.* See § 648.21(g).

■ 71. Section 648.293 is revised to read as follows:

§ 648.293 Tilefish accountability measures.

(a) If the ACL is exceeded, the amount of the ACL overage that cannot be directly attributed to IFQ allocation holders having exceeded their IFQ allocation will be deducted from the ACL in the following fishing year. All overages directly attributable to IFQ allocation holders will be deducted from the appropriate IFQ allocation(s) in the subsequent fishing year, as required by § 648.294(f).

(b) [Reserved]

■ 72. Section 648.294 is revised to read as follows:

§ 648.294 Individual fishing quota (IFQ) program.

(a) *IFQ allocation permits.* After adjustments for incidental catch, research set asides, and overages, as appropriate, pursuant to § 648.292(c), the Regional Administrator shall divide the remaining TAL among the IFQ allocation permit holders who held an IFQ permit as of September 1 of a giving fishing year. Allocations shall be made by applying the allocation percentages that exist on September 1 of a given fishing year to the IFQ TAL pursuant to § 648.292(c), subject to any deductions for overages pursuant to paragraph (f) of this section. Amounts of IFQ of 0.5 lb (0.23 kg) or smaller created by this allocation shall be rounded downward to the nearest whole number, and amounts of IFQ greater than 0.5 lb (0.23 kg) created by this division shall be rounded upward to the nearest whole number, so that IFQ allocations are specified in whole pounds. These allocations shall be issued in the form of an annual IFQ allocation permit.

(b) *Application*—(1) *General.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from NMFS. The application must be filled out completely and signed by the applicant. Each application must include a declaration of all interests in IFQ allocations, as defined in § 648.2, listed by IFQ allocation permit number, and must list all Federal vessel permit numbers for all vessels that an applicant owns or leases that would be authorized to possess tilefish pursuant to the IFQ allocation permit. The Regional Administrator will notify the applicant of any deficiency in the application.

(i) [Reserved]

(ii) *Renewal applications.* Applications to renew an IFQ allocation permit must be received by September 15 to be processed in time for the November 1 start of the fishing year. Renewal applications received after this date may not be approved, and a new permit may not be issued before the start of the next fishing year. An IFQ allocation permit holder must renew his/her IFQ allocation permit on an annual basis by submitting an application for such permit prior to the end of the fishing year for which the permit is required.

(2) *Issuance.* Except as provided in subpart D of 15 CFR part 904, and provided an application for such permit is submitted by September 15, as specified in paragraph (b)(1)(ii) of this section, NMFS shall issue annual IFQ allocation permits on or before October 31 to those who hold permanent allocation as of September 1 of the current fishing year. During the period between September 1 and October 31, transfer of IFQ is not permitted, as described in paragraph (e)(4) of this section. The IFQ allocation permit shall specify the allocation percentage of the IFQ TAL which the IFQ permit holder is authorized to harvest.

(3) *Duration.* An annual IFQ allocation permit is valid until October 31 of each fishing year unless it is suspended, modified, or revoked pursuant to 15 CFR part 904, or revised due to a transfer of all or part of the allocation percentage under paragraph (e) of this section. All Federal vessel permit numbers that are listed on the IFQ allocation permit are authorized to possess tilefish pursuant to the IFQ allocation permit until the end of the fishing year or until NMFS receives written notification from the IFQ allocation permit holder that the vessel is no longer authorized to possess tilefish pursuant to the subject permit. An IFQ allocation permit holder that wishes to authorize an additional vessel(s) to possess tilefish pursuant to the IFQ allocation permit must send written notification to NMFS that includes the vessel permit number, and the dates on which the IFQ allocation permit holder desires the vessel to be authorized to land IFQ tilefish pursuant to the IFQ allocation permit to be effective.

(4) *Alteration.* An annual IFQ allocation permit that is altered, erased, or mutilated is invalid.

(5) *Replacement.* The Regional Administrator may issue a replacement permit upon written application of the annual IFQ allocation permit holder.

(6) *Transfer.* The annual IFQ allocation permit is valid only for the person to whom it is issued. All or part of the allocation specified in the IFQ allocation permit may be transferred in accordance with paragraph (e) of this section.

(7) *Abandonment or voluntary relinquishment.* Any IFQ Allocation permit that is voluntarily relinquished to the Regional Administrator, or deemed to have been voluntarily relinquished for failure to pay a recoverable cost fee, in accordance with the requirements specified in paragraph (h)(2) of this section, or for failure to renew in accordance with paragraph (b)(1)(ii) of this section, shall not be reissued or renewed in a subsequent year.

(c) [Reserved]

(d) [Reserved]

(e) *Transferring IFQ allocations*—(1) *Temporary transfers.* Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, the owner of an IFQ allocation may transfer the entire IFQ allocation, or a portion of the IFQ allocation, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Temporary IFQ allocation transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed, unless the applicant specifically requests that the transfer be processed for the subsequent fishing year. The Regional Administrator has final approval authority for all temporary IFQ

allocation transfer requests. The approval of a temporary transfer may be rescinded if the Regional Administrator finds that an emergency has rendered the lessee unable to fish for the transferred IFQ allocation, but only if none of the transferred allocation has been landed.

(2) *Permanent transfers.* Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, an owner of an IFQ allocation may permanently transfer the entire IFQ allocation, or a portion of the IFQ allocation, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). The Regional Administrator has final approval authority for all permanent IFQ allocation transfer requests.

(3) *IFQ allocation transfer restrictions.* (i) If IFQ allocation is temporarily transferred to any eligible entity, it may not be transferred by the transferee again within the same fishing year, unless the transfer is rescinded due to an emergency, as described in paragraph (e)(1) of this section.

(ii) A transfer of IFQ will not be approved by the Regional Administrator if it would result in an entity owning, or having an interest in, a percentage of IFQ allocation exceeding 49 percent of the total tilefish adjusted TAL.

(iii) If the owner of an IFQ allocation leases additional quota from another IFQ allocation permit holder, any landings associated with this transferred quota will be deducted from the total yearly landings of the lessee, before his/her base allocation, if any exists, for the purpose of calculating the appropriate cost-recovery fee. As described in paragraph (h) of this section, a tilefish IFQ allocation permit holder with a permanent allocation shall incur a cost-recovery fee, based on the value of landings of tilefish authorized under his/her tilefish IFQ allocation permit, including allocation that he/she leases to another IFQ allocation permit holder.

(4) *Application for an IFQ allocation transfer.* Any IFQ allocation permit holder applying for either permanent or temporary transfer of IFQ allocation must submit a completed IFQ Allocation Transfer Form, available from NMFS. The IFQ Allocation Transfer Form must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicant desires to have the IFQ allocation transfer effective. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications for IFQ allocation transfers must be received by September 1 to be processed for the current fishing year.

(i) *Application information requirements.* An application to transfer IFQ allocation must include the following information: The type of transfer (either temporary or permanent); the signature of both parties involved; the price paid for the transfer; indicate eligibility to receive IFQ allocation; the amount of allocation to be transferred; and a declaration; by IFQ Allocation permit number, of all the IFQ allocations that the person or entity receiving the IFQ allocation has an interest. The person or entity receiving the IFQ allocation must indicate the permit numbers of all federally permitted vessels that will possess or land their IFQ allocation. Information obtained from the IFQ Allocation Transfer Form is confidential pursuant to 16 U.S.C. 1881a.

(ii) *Approval of IFQ transfer applications.* Unless an application to transfer IFQ is denied according to paragraph (e)(4)(iii) of this section, the Regional Administrator shall issue confirmation of application approval in the form of a new or updated IFQ allocation permit to the parties involved in the transfer within 30 days of receipt of a completed application.

(iii) *Denial of transfer application.* The Regional Administrator may reject an application to transfer IFQ allocation for the following reasons: The application is incomplete; the transferor does not possess a valid tilefish IFQ allocation permit; the transferor's or transferee's vessel or tilefish IFQ allocation permit has been sanctioned, pursuant to an enforcement proceeding under 15 CFR part 904; the transfer will result in the transferee having a tilefish IFQ allocation that exceeds 49 percent of the adjusted TAL allocated to IFQ allocation permit holders; the transfer is to a person or entity that is not eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a); or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer IFQ allocation, the Regional Administrator shall send a letter to the applicant describing the reason(s) for the denial. The decision by the Regional Administrator is the final decision of the Department of Commerce; there is no opportunity for an administrative appeal.

(f) *IFQ allocation overages.* Any IFQ allocation that is exceeded, including amounts of tilefish landed by a lessee in excess of a temporary transfer of IFQ allocation, will be reduced by the amount of the overage in the subsequent fishing year(s). If an IFQ allocation overage is not deducted from the appropriate allocation before the IFQ allocation permit is issued for the subsequent fishing year, a revised IFQ allocation permit reflecting the deduction of the overage shall be issued by NMFS. If the allocation cannot be reduced in the subsequent fishing year because the full allocation has already been landed or transferred, the IFQ allocation permit will indicate a reduced allocation for the amount of the overage in the next fishing year.

(g) *IFQ allocation acquisition restriction.* No person or entity may acquire more than 49 percent of the annual adjusted tilefish TAL, specified pursuant to § 648.294, at any point during a fishing year. For purposes of this paragraph, acquisition includes any permanent or temporary transfer of IFQ. The calculation of IFQ allocation for purposes of the restriction on acquisition includes IFQ allocation interests held by: A company in which the IFQ holder is a shareholder, officer, or partner; an immediate family member; or a company in which the IFQ holder is a part owner or partner.

(h) *IFQ cost recovery.* A fee shall be determined as described in paragraph (h)(1) of this section, and collected to recover the government costs associated with management, data collection and analysis, and enforcement of the IFQ program. A tilefish IFQ allocation permit holder shall be responsible for paying the fee assessed by NMFS. A tilefish IFQ allocation permit holder with a permanent allocation shall incur a cost-recovery fee, based on the value of landings of tilefish authorized under his/her tilefish IFQ allocation permit, including allocation that he/she leases to another IFQ allocation permit holder. A tilefish IFQ allocation permit holder, with a permanent allocation, shall be responsible for submitting this payment to NMFS once per year, as specified in paragraph (h)(2) of this section. For the purpose of this section, the cost-recovery billing period is defined as the full calendar year, beginning with January 1, 2010. NMFS will create an annual IFQ allocation bill for each cost-recovery billing period and provide it to each IFQ allocation permit holder. The bill will include annual information regarding the amount and value of IFQ allocation landed during the prior cost-recovery billing period, and the associated cost-recovery fees. NMFS will also create a report that will detail the costs incurred by NMFS, for the management, enforcement, and data collection and analysis associated with the IFQ allocation program during the prior cost-recovery billing period.

(1) *NMFS determination of the total annual recoverable costs of the tilefish IFQ program.* The Regional Administrator shall determine the costs

associated with the management, data collection and analysis, and enforcement of the IFQ allocation program. The recoverable costs will be divided by the amount of the total ex-vessel value of all tilefish IFQ landings during the cost-recovery billing period to derive a percentage. IFQ allocation permit holders will be assessed a fee based on this percentage multiplied by the total ex-vessel value of all landings under their permanent IFQ allocation permit, including landings of allocation that is leased. This fee shall not exceed 3 percent of the total value of tilefish landings of the IFQ allocation permit holder. If NMFS determines that the costs associated with the management, data collection and analysis, and enforcement of the IFQ allocation program exceed 3 percent of the total value of tilefish landings, only 3 percent are recoverable.

(i) *Valuation of IFQ allocation.* The 3-percent limitation on cost-recovery fees shall be based on the ex-vessel value of landed allocation. The ex-vessel value for each pound of tilefish landed by an IFQ allocation holder shall be determined from Northeast Federal dealer reports submitted to NMFS, which include the price per pound paid to the vessel at the time of dealer purchase.

(ii) [Reserved]

(2) *Fee payment procedure.* An IFQ allocation permit holder who has incurred a cost-recovery fee must pay the fee to NMFS within 45 days of the date of the bill. Cost-recovery payments shall be made electronically via the Federal Web portal, *http://www.pay.gov* or other Internet sites designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment Web site and the cost-recovery fee bill. Electronic payment options shall include payment via a credit card, as specified in the cost-recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Alternatively, payment by check may be authorized by Regional Administrator if he/she determines that electronic payment is not possible.

(3) *Payment compliance.* If the cost-recovery payment, as determined by NMFS, is not made within the time specified in paragraph (h)(2) of this section, the Regional Administrator will deny the renewal of the appropriate IFQ allocation permit until full payment is received. If, upon preliminary review of a fee payment, the Regional Administrator determines that the IFQ allocation permit holder has not paid the full amount due, he/she shall notify the IFQ allocation permit holder in writing of the deficiency. NMFS shall explain the deficiency and provide the IFQ allocation permit holder 30 days from the date of the notice, either to pay the amount assessed or to provide evidence that the amount paid was correct. If the IFQ allocation permit holder submits evidence in support of the appropriateness of his/her payment, the Regional Administrator shall determine whether there is a reasonable basis upon which to conclude that the amount of the tendered payment is correct. This determination shall be in set forth in a Final Administrative Determination (FAD) that is signed by the Regional Administrator. A FAD shall be the final decision of the Department of Commerce. If the Regional Administrator determines that the IFQ allocation permit holder has not paid the appropriate fee, he/she shall require payment within 30 days of the date of the FAD. If a FAD is not issued until after the start of the fishing year, the IFQ allocation permit holder may be issued a letter of authorization to fish until the FAD is issued, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the tilefish IFQ allocation permit shall not be issued, and the letter of authorization shall not be valid until such terms are met. Any tilefish landed pursuant to the above authorization will count against the IFQ allocation permit, if issued. If the Regional Administrator determines that the IFQ allocation permit holder owes additional fees for the previous cost-recovery billing period, and the renewed IFQ allocation permit has already been issued, the Regional Administrator shall issue a FAD and will notify the IFQ allocation permit holder in writing. The IFQ allocation permit holder shall have 30 days from the date of the FAD to comply with the terms of the FAD. If the IFQ allocation permit holder does not comply with the terms of the FAD within this period, the Regional Administrator shall rescind the IFQ allocation permit until such terms are met. If an appropriate payment is not received within 30 days of the date of a FAD, the Regional Administrator shall refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection. No permanent or temporary IFQ allocation transfers may be made to or from the allocation of an IFQ allocation permit holder who has not complied with any FAD. If the Regional Administrator determines that the terms of a FAD have been met, the IFQ allocation permit holder may renew the tilefish IFQ allocation permit. If NMFS does not receive full payment of a recoverable cost fee prior to the end of the cost-recovery billing period immediately following the one for which the fee was incurred, the subject IFQ allocation permit shall be deemed to have been voluntarily relinquished pursuant to paragraph (b)(7) of this section.

(4) *Periodic review of the IFQ program.* A formal review of the IFQ program must be conducted by the MAFMC within 5 years of the effective date of the final regulations. Thereafter, it shall be incorporated into every scheduled MAFMC review of the FMP (*i.e.,* future amendments or frameworks), but no less frequently than every 7 years.

■ 73. Section 648.295 is revised to read as follows:

§ 648.295 Tilefish incidental trip limits.

(a) *Incidental trip limit for vessels not fishing under an IFQ allocation.* Any vessel of the United States fishing under a tilefish permit, as described at § 648.4(a)(12), is prohibited from possessing more than 500 lb (226.8 kg) of tilefish at any time, unless the vessel is fishing under a tilefish IFQ allocation permit, as specified at § 648.294(a). Any tilefish landed by a vessel fishing under an IFQ allocation permit, on a given fishing trip, count as landings under the IFQ allocation permit.

(b) *In-season closure of the incidental fishery.* The Regional Administrator will monitor the harvest of the tilefish incidental TAL based on dealer reports and other available information, and shall determine the date when the incidental tilefish TAL has been landed. The Regional Administrator shall publish a notice in the **Federal Register** notifying vessel and dealer permit holders that, effective upon a specific date, the incidental tilefish fishery is closed for the remainder of the fishing year.

■ 74. Section 648.296 is revised to read as follows:

§ 648.296 Tilefish recreational possession limit.

Any person fishing from a vessel that is not fishing under a tilefish vessel permit issued pursuant to § 648.4(a)(12), may land up to eight tilefish per trip. Anglers fishing onboard a charter/party vessel shall observe the recreational possession limit.

■ 75. Section 648.297 is added to subpart N to read as follows:

§ 648.297 Tilefish gear restricted areas.

No vessel of the United States may fish with bottom-tending mobile gear within the areas bounded by the following coordinates:

Canyon	N. lat.			W. long.		
	Degrees	Min	Seconds	Degrees	Min	Seconds
Oceanographer	40.0	29.0	50.0	68.0	10.0	30.0
	40.0	29.0	30.0	68.0	8.0	34.8
	40.0	25.0	51.6	68.0	6.0	36.0
	40.0	22.0	22.8	68.0	6.0	50.4
	40.0	19.0	40.8	68.0	4.0	48.0
	40.0	19.0	5.0	68.0	2.0	19.0
	40.0	16.0	41.0	68.0	1.0	16.0
	40.0	14.0	28.0	68.0	11.0	28.0
Lydonia	40.0	31.0	55.2	67.0	43.0	1.2
	40.0	28.0	52.0	67.0	38.0	43.0
	40.0	21.0	39.6	67.0	37.0	4.8
	40.0	21.0	4.0	67.0	43.0	1.0
	40.0	26.0	32.0	67.0	40.0	57.0
	40.0	28.0	31.0	67.0	43.0	0.0
Veatch	40.0	0.0	40.0	69.0	37.0	8.0
	40.0	0.0	41.0	69.0	35.0	25.0
	39.0	54.0	43.0	69.0	33.0	54.0
	39.0	54.0	43.0	69.0	40.0	52.0
Norfolk	37.0	5.0	50.0	74.0	45.0	34.0
	37.0	6.0	58.0	74.0	40.0	48.0
	37.0	4.0	31.0	74.0	37.0	46.0
	37.0	4.0	1.0	74.0	33.0	50.0
	36.0	58.0	37.0	74.0	36.0	58.0
	37.0	4.0	26.0	74.0	41.0	2.0

§ 648.298 [Added and reserved]

■ 76. Section 648.298 is added to subpart N and reserved.

■ 77. Section 648.299 is added to subpart N to read as follows:

§ 648.299 Tilefish framework specifications.

(a) *Within-season management action.* The MAFMC may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Tilefish FMP.

(1) *Specific management measures.* The following specific management measures may be adjusted at any time through the framework adjustment process:

(i) Minimum fish size;
(ii) Minimum hook size;
(iii) Closed seasons;
(iv) Closed areas;
(v) Gear restrictions or prohibitions;
(vi) Permitting restrictions;
(vii) Gear limits;
(viii) Trip limits;
(ix) Adjustments within existing ABC control rule levels;
(x) Adjustments to the existing MAFMC risk policy;
(xi) Introduction of new AMs, including sub ACTs;
(xii) Annual specification quota setting process;
(xiii) Tilefish FMP Monitoring Committee composition and process;
(xiv) Description and identification of EFH;
(xv) Fishing gear management measures that impact EFH;
(xvi) Habitat areas of particular concern;
(xvii) Set-aside quotas for scientific research;
(xviii) Changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs;
(xix) Recreational management measures, including the bag limit, minimum fish size limit, seasons, and gear restrictions or prohibitions; and
(xx) IFQ program review components, including capacity reduction, safety at sea issues, transferability rules, ownership concentration caps, permit and reporting requirements, and fee and cost-recovery issues.
(xxi) Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require a formal amendment of the FMP instead of a framework adjustment.

(2) *Adjustment process.* If the MAFMC determines that an adjustment to management measures is necessary to meet the goals and objectives of the FMP, it will recommend, develop, and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC will provide the public with advance notice of the availability of the recommendation, appropriate justifications and economic and biological analyses, and opportunity to comment on the proposed adjustments prior to and at the second MAFMC meeting on that framework action.

(3) *MAFMC recommendation.* After developing management actions and receiving public testimony, the MAFMC will make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, it must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;
(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the MAFMC's recommended management measures;
(iii) Whether there is an immediate need to protect the resource; and
(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Regional Administrator action.* If the MAFMC's recommendation includes adjustments or additions to management measures and, after reviewing the

MAFMC's recommendation and supporting information:

(i) If the Regional Administrator concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraphs (a)(2) and (a)(3) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If the Regional Administrator concurs with the MAFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Administrator concurs with the MAFMC's recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If the Regional Administrator does not concur with the MAFMC's recommendation, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

§§ 648.1, 648.2, 648.4, 648.6, 648.7, 648.8, 648.12, 648.13, 648.14, 648.15, and 648.94 [Amended]

■ 78. In the table below, for each section in the left column, remove the text from whenever it appears throughout the section and add the text indicated in the right column.

Section	Remove	Add	Frequency
§ 648.1(a)	surf clam	surfclam	1
§ 648.1(a)	Surf Clam	Surfclam	1
§ 648.2	surf clam	surfclam	6
§ 648.2	surf clams	surfclams	3
§ 648.2	Surf clams	Surfclams	1
§ 648.2	§ 648.70	§ 648.74	1
§ 648.2	§ 648.291(e)(1)	§ 648.294(e)(1)	2
§ 648.4(a)(3) introductory text	§ 648.105	§ 648.106	1
§ 648.4(a)(3)(i)(A)	§ 648.105	§ 648.106	1
§ 648.4(a)(3)(i)(L)(*ii*)	§ 648.105	§ 648.106	1
§ 648.4(a)(3)(i)(L)(*iii*)	§ 648.104(b)(1)	§ 648.108(b)(1)	1
§ 648.4(a)(4)	Surf clam	Surfclam	1
§ 648.4(a)(4)	surf clams	surfclams	2
§ 648.4(a)(4)	surf clam	surfclam	1
§ 648.4(a)(5)(ii)	§ 648.21	§ 648.22	1
§ 648.4(a)(6) introductory text	§ 648.125	§ 648.128	1
§ 648.4(a)(12) introductory text	§ 648.291	§ 648.294	1
§ 648.4(a)(12) introductory text	§ 648.293	§ 648.295	1
§ 648.4(a)(12)(i)	§ 648.295	§ 648.296	1
§ 648.6(a)(1)	surf clam	surfclam	2
§ 648.6(c)	surf clam	surfclam	1
§ 648.7(b)(1)(ii)	Surf clam	Surfclam	1
§ 648.7(b)(1)(ii)	surf clam	surfclam	2
§ 648.7(b)(1)(ii)	surf clams	surfclams	1
§ 648.7(b)(2)(ii)	§ 648.291(a)	§ 648.294(a)	1
§ 648.8(e)	surf clam	surfclam	2
§ 648.12 introductory text	surf clam	surfclam	1
§ 648.12(c)	surf clams	surfclams	1
§ 648.14(g)(1) introductory text	§ 648.21(g)	§ 648.22(g)	1
§ 648.14(g)(1)(iii)	§ 648.26	§ 648.27	1
§ 648.14(g)(2) introductory text	§ 648.21(g)	§ 648.22(g)	1
§ 648.14(g)(2)(i)	§ 648.21	§ 648.22	1
§ 648.14(g)(2)(ii)(C)	§ 648.25	§ 648.26	1
§ 648.14(g)(3) introductory text	§ 648.21(g)	§ 648.22(g)	1
§ 648.14(g)(3)(i)	§ 648.21(d)	§ 648.22(d)	1
§ 648.14(h) introductory text	§ 648.21(g)	§ 648.22(g)	1
§ 648.14(n)(1) introductory text	§ 648.21(g)	§ 648.22(g)	1
§ 648.14(n)(1)(i)	§ 648.105	§ 648.106	1
§ 648.14(n)(1)(i)	§ 648.102	§ 648.105	1
§ 648.14(n)(1)(ii)(B)	§ 648.105	§ 648.106	1
§ 648.14(n)(1)(iii)	§ 648.104	§ 648.108	1
§ 648.14(n)(1)(iii)	§ 648.105(a)	§ 648.106(a)	1
§ 648.14(n)(2) introductory text	§ 648.100(f)	§ 648.102(e)	1
§ 648.14(n)(2)(i)(A)	§ 648.104	§ 648.108	1
§ 648.14(n)(2)(i)(B)	§ 648.105(d)	§ 648.106(d)	1
§ 648.14(n)(2)(i)(B)	§ 648.104(a)	§ 648.108(a)	1
§ 648.14(n)(2)(i)(B)	§ 648.104(b)	§ 648.108(b)	1
§ 648.14(n)(2)(iii)(A)	§ 648.104	§ 648.108	1
§ 648.14(n)(2)(iii)(A)	§ 648.104(e)	§ 648.108(e)	1
§ 648.14(n)(2)(iii)(B)	§ 648.104	§ 648.108	1
§ 648.14(n)(2)(iii)(B)	§ 648.104(f)	§ 648.108(f)	1
§ 648.14(n)(2)(iii)(C)	§ 648.104(b)(1)	§ 648.108(b)(1)	1
§ 648.14(n)(2)(iii)(C)	§ 648.104	§ 648.108	1
§ 648.14(n)(3) introductory text	§ 648.100(f)	§ 648.102(e)	1
§ 648.14(n)(3)(ii)	§ 648.105	§ 648.106	1
§ 648.14(n)(3)(iii)	§ 648.102	§ 648.105	1
§ 648.14(o)(1) introductory text	§ 648.120(e)	§ 648.122(e)	1

Section	Remove	Add	Frequency
§ 648.14(o)(1)(ii)(A)	§ 648.122(g)	§§ 648.124 and 648.127	1
§ 648.14(o)(1)(ii)(D)	§ 648.123	§ 648.125	2
§ 648.14(o)(1)(ii)(E)	§ 648.120(b)(3), (4), and (7)	§ 648.122(a)	1
§ 648.14(o)(1)(iii)	§ 648.124	§ 648.126	1
§ 648.14(o)(1)(v)	§ 648.123	§ 648.125	1
§ 648.14(o)(1)(vi)	§ 648.122 (a) or (b)	§ 648.124 (a) or (b)	1
§ 648.14(o)(1)(vi)	§ 648.123(b)	§ 648.125(a)(5)	1
§ 648.14(o)(2) introductory text	§ 648.120(e)	§ 648.122(e)	1
§ 648.14(o)(2)(i) introductory text	§ 648.123	§ 648.125	2
§ 648.14(o)(2)(i)(C)	§ 648.122	§ 648.124	1
§ 648.14(o)(3) introductory text	§ 648.120(e)	§ 648.122(e)	1
§ 648.14(o)(3)(ii)	§ 648.125	§ 648.128	1
§ 648.14(o)(3)(iii)	§ 648.122	§ 648.124	1
§ 648.14(o)(3)(v)	§ 648.124(b)	§ 648.126(b)	1
§ 648.14(p)(1) introductory text	§ 648.140(e)	§ 648.142(d)	1
§ 648.14(p)(1)(i)	§ 648.142	§ 648.146	1
§ 648.14(p)(1)(v)	§ 648.143	§ 648.147	1
§ 648.14(p)(2) introductory text	§ 648.140(e)	§ 648.142(d)	1
§ 648.14(p)(3) introductory text	§ 648.140	§ 648.142	1
§ 648.14(p)(2)(ii)(D)(*3*)	§ 648.140(e)	§ 648.142(d)	1
§ 648.14(p)(3)(iii)	§ 648.142	§ 648.146	1
§ 648.14(q) introductory text	§ 648.160(h)	§ 648.162(g)	1
§ 648.14(q)(2)(i)	§ 648.161(b)	§ 648.163(b)	1
§ 648.14(q)(2)(ii)	§ 648.161(a)	§ 648.163(a)	1
§ 648.14(u)(2)(ii)	§ 648.293	§ 648.295	1
§ 648.14(u)(2)(ii)	§ 648.291(a)	§ 648.294(a)	1
§ 648.14(u)(2)(iii)	§ 648.291(a)	§ 648.294(a)	1
§ 648.15(b)(1)	§ 648.70	§ 648.74	1
§ 648.15(b)(2)	§ 648.76	§ 648.78	1
§ 648.94(c)(3)(iv)	§ 648.104(a)(1)	§ 648.108(a)(1)	1

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Part III

Federal Communications Commission

47 CFR Parts 0, 1 and 76
Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage; Revision of the Commission's Program Carriage Rules; Final Rule and Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 76

[MB Docket No. 07–42; FCC 11–119]

Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In 1993, the Federal Communications Commission (FCC) adopted rules pertaining to carriage of video programming vendors by multichannel video programming distributors (''MVPDs''), known as the ''program carriage rules.'' The rules are intended to benefit consumers by promoting competition and diversity in the video programming and video distribution markets. In this document, the FCC amends its rules to improve the procedures for addressing complaints alleging violations of the program carriage rules.

DATES: Effective October 31, 2011, except for §§ 1.221(h), 1.229(b)(3), 1.229(b)(4), 1.248(a), 1.248(b), 76.7(g)(2), 76.1302(c)(1), 76.1302 (d), 76.1302(e)(1), and 76.1302(k), which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact David Konczal, *David.Konczal@fcc.gov;* of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order,* FCC 11–119, adopted on July 29, 2011 and released on August 1, 2011. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This document adopts new or revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3501–3520). The requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. The Commission will publish a separate notice in the **Federal Register** inviting comment on the new or revised information collection requirements adopted in this document. The requirements will not go into effect until OMB has approved it and the Commission has published a notice announcing the effective date of the information collection requirements. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' In this present document, we have assessed the potential effects of the various policy changes with regard to information collection burdens on small business concerns, and find that these requirements will benefit many companies with fewer than 25 employees by promoting the fair and expeditious resolution of program access complaints. In addition, we have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (''FRFA'') below.

Summary of the Second Report and Order

I. Introduction

1. In 1993, the Commission adopted rules implementing a provision of the 1992 Cable Act [1] pertaining to carriage of video programming vendors by multichannel video programming distributors (''MVPDs'') intended to benefit consumers by promoting competition and diversity in the video programming and video distribution markets (the ''program carriage'' rules).[2] As required by Congress, these rules allow for the filing of complaints with the Commission alleging that an MVPD has (i) Required a financial interest in a video programming vendor's program service as a condition for carriage; (ii) coerced a video programming vendor to provide, or retaliated against a vendor for failing to provide, exclusive rights as a condition of carriage; or (iii) unreasonably restrained the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage. Congress specifically directed the Commission to provide for ''expedited review'' of these complaints and to provide for appropriate penalties and remedies for any violations. Programming vendors have complained that the Commission's procedures for addressing program carriage complaints have hindered the filing of legitimate complaints and have failed to provide for the expedited review envisioned by Congress.

2. In this *Second Report and Order* in MB Docket No. 07–42,[3] we take initial steps to improve our procedures for addressing program carriage complaints by [4]:

[1] *See* Cable Television Consumer Protection and Competition Act of 1992, Public Law 102–385, 106 Stat. 1460 (1992) (''1992 Cable Act''); *see also* 47 U.S.C. 536.

[2] *See Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage,* MM Docket No. 92–265, Second Report and Order 9 FCC Rcd 2642 (1993) (''*1993 Program Carriage Order*''); *see also Implementation of the Cable Television Consumer Protection And Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage,* MM Docket No. 92–265, Memorandum Opinion and Order, 9 FCC Rcd 4415 (1994) (''*1994 Program Carriage Order*''). The Commission's program carriage rules are set forth at 47 CFR 76.1300–76.1302.

[3] The initial *Notice of Proposed Rulemaking* in MB Docket No. 07–42 was released in June 2007 and pertains to both program carriage and leased access issues. *See Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage,* MB Docket No. 07–42, Notice of Proposed Rule Making, 22 FCC Rcd 11222 (2007) (''*Program Carriage NPRM*''). The Commission released a *Report and Order and Further Notice of Proposed Rulemaking* in this docket in February 2008 pertaining only to leased access issues. *See Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage,* MB Docket No. 07–42, Report and Order, 23 FCC Rcd 2909 (2008), *stayed by United Church of Christ, et al.* v. *FCC,* No. 08–3245 (6th Cir. 2008).

[4] The new procedures adopted in the *Second Report and Order* do not apply to program carriage complaints that are currently pending or to program carriage complaints that are filed before the

• Codifying in our rules what a program carriage complainant must demonstrate in its complaint to establish a *prima facie* case of a program carriage violation;

• Providing the defendant with 60 days (rather than the current 30 days) to file an answer to a program carriage complaint;

• Establishing deadlines for action by the Media Bureau and Administrative Law Judges (''ALJ'') when acting on program carriage complaints; and

• Establishing procedures for the Media Bureau's consideration of requests for a temporary standstill of the price, terms, and other conditions of an existing programming contract by a program carriage complainant seeking renewal of such a contract.

3. In the *Notice of Proposed Rulemaking* in MB Docket No. 11–131, we seek comment on the following proposed revisions to or clarifications of our program carriage rules, which are intended to further improve our procedures and to advance the goals of the program carriage statute:

• Modifying the program carriage statute of limitations to provide that a complaint must be filed within one year of the act that allegedly violated the rules;

• Revising discovery procedures for program carriage complaint proceedings in which the Media Bureau rules on the merits of the complaint after discovery is conducted, including expanded discovery procedures (also known as party-to-party discovery) and an automatic document production process, to ensure fairness to all parties while also ensuring compliance with the expedited resolution deadlines adopted in the *Second Report and Order* in MB Docket No. 07–42;

• Permitting the award of damages in program carriage cases;

• Providing the Media Bureau or ALJ with the discretion to order parties to submit their best ''final offer'' for the rates, terms, and conditions for the programming at issue in a complaint proceeding to assist in crafting a remedy;

• Clarifying the rule that delays the effectiveness of a mandatory carriage remedy until it is upheld by the Commission on review, including codifying a requirement that the defendant MVPD must make an evidentiary showing to the Media Bureau or an ALJ as to whether a mandatory carriage remedy would result in deletion of other programming;

• Codifying in our rules that retaliation by an MVPD against a programming vendor for filing a program carriage complaint is actionable as a potential form of discrimination on the basis of affiliation and adopting other measures to address retaliation;

• Adopting a rule that requires a vertically integrated MVPD to negotiate in good faith with an unaffiliated programming vendor with respect to video programming that is similarly situated to video programming affiliated with the MVPD;

• Clarifying that the discrimination provision precludes a vertically integrated MVPD from discriminating on the basis of a programming vendor's lack of affiliation with another MVPD; and

• Codifying in our rules which party bears the burden of proof in program carriage discrimination cases.

We also invite commenters to suggest any other changes to our program carriage rules that would improve our procedures and promote the goals of the program carriage statute.

II. Background

4. In the 1992 Cable Act, Congress sought to promote competition and diversity in the video distribution market as well as in the market for video programming carried by cable operators and other MVPDs. Congress expressed concern that the market power held by cable operators would adversely impact programming vendors, noting that ''programmers are sometimes required to give cable operators an exclusive right to carry the programming, a financial interest, or some other added consideration as a condition of carriage on the cable system.'' [5] Congress also explained that increased vertical integration in the cable industry could harm programming vendors because it gives cable operators ''the incentive and ability to favor their affiliated programmers.'' [6] Congress concluded that this harm to programming vendors could adversely affect both competition [7] and diversity [8] in the video programming market, as well as hinder competition in the video distribution market.[9]

5. To address these concerns, Congress passed section 616 of the Communications Act of 1934, as amended (the ''Act''), which directs the Commission to ''establish regulations governing program carriage agreements and related practices between cable

effective date of the new procedures adopted herein. *See The Tennis Channel Inc.* v. *Comcast Cable Communications, LLC,* MB Docket No. 10–204, File No. CSR–8258–P (filed January 5, 2010); *Bloomberg, L.P.* v. *Comcast Cable Communications, LLC,* MB Docket No. 11–104 (filed June 13, 2011).

[5] S. Rep. No. 102–92 (1991), at 24, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1157; *see also id.* (''[T]he Committee continues to believe that the operator in certain instances can abuse its locally-derived market power to the detriment of programmers and competitors.''); H.R. Rep. No. 102–628 (1992), at 41 (''Submissions to the Committee also suggest that some vertically integrated MSOs have agreed to carry a programming service only in exchange for an ownership interest in the service.'').

[6] 1992 Cable Act 2(a)(5) (''The cable industry has become vertically integrated; cable operators and cable programmers often have common ownership. As a result, cable operators have the incentive and ability to favor their affiliated programmers. This could make it more difficult for noncable-affiliated programmers to secure carriage on cable systems.''); *see also* S. Rep. No. 102–92 (1991), at 25, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1158 (''vertical integration gives cable operators the incentive and ability to favor their affiliated programming services''); *see id.* (''For example, the cable operator might give its affiliated programmer a more desirable channel position than another programmer, or even refuse to carry other programmers.''); H.R. Rep. No. 102–628 (1992), at 41 (''Submissions to the Committee allege that some cable operators favor programming services in which they have an interest, denying system access to programmers affiliated with rival MSOs and discriminating against rival programming services with regard to price, channel positioning, and promotion.'').

[7] *See* S. Rep. No. 102–92 (1991), at 25–26, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1158–59 (''Because of the trend toward vertical integration, cable operators now have a clear vested interest in the competitive success of some of the programming services seeking access through their conduit.''); H.R. Rep. No. 102–628 (1992), at 41 (''[T]he Committee received testimony that vertically integrated operators have impeded the creation of new programming services by refusing or threatening to refuse carriage to such services that would compete with their existing programming services.''); *see also* 47 U.S.C. 536(a)(3) (requiring the Commission to adopt regulations prohibiting discrimination on the basis of affiliation that has ''the effect of * * * unreasonably restrain[ing] the ability of an unaffiliated video programming vendor to compete fairly''); *1993 Program Carriage Order,* 9 FCC Rcd at 2643, para. 2 (''Congress concluded that vertically integrated cable operators have the incentive and ability to favor affiliated programmers over unaffiliated programmers with respect to granting carriage on their systems. Cable operators or programmers that compete with the vertically integrated entities may suffer harm to the extent that they do not receive such favorable terms.'').

[8] *See* H.R. Rep. No. 102–628 (1992), at 41 (''The Committee received testimony that vertically integrated companies reduce diversity in programming by threatening the viability of rival cable programming services.'').

[9] In addition to promoting competition and diversity in the video programming market, the Commission has explained that the program carriage provision of the 1992 Cable Act is also intended to promote competition in the video distribution market by ensuring that MVPDs have access to programming. *See 1994 Program Carriage Order,* 9 FCC Rcd at 4419, para. 28 (''[I]n passing section 616, Congress was concerned with the effect a cable operator's market power would have both on programmers and on competing MVPDs * * *.''); *see also* S. Rep. No. 102–92 (1991), at 23, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1156 (''In addition to using its market power to the detriment of consumers directly, a cable operator with market power may be able to use this power to the detriment of programmers. Through greater control over programmers, a cable operator may be able to use its market power to the detriment of video distribution competitors.'').

operators or other [MVPDs] and video programming vendors.'' [10] Congress mandated that these regulations shall include provisions prohibiting a cable operator or other MVPD from engaging in three types of conduct: (i) ''Requiring a financial interest in a program service as a condition for carriage on one or more of such operator's systems'' (the ''financial interest'' provision); (ii) ''coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other [MVPDs] as a condition of carriage on a system'' (the ''exclusivity'' provision); and (iii) ''engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors'' (the ''discrimination'' provision). Section 616 also directs the Commission to (i) ''Provide for expedited review of any complaints made by a video programming vendor pursuant to'' section 616; (ii) ''provide for appropriate penalties and remedies for violations of [section 616], including carriage''; and (iii) ''provide penalties to be assessed against any person filing a frivolous complaint pursuant to'' section 616.

6. In the *1993 Program Carriage Order,* the Commission implemented section 616 by adopting procedures for the review of program carriage complaints as well as penalties and remedies. In doing so, the Commission explained that its rules were intended to prohibit the activities specified by Congress ''without unduly interfering with legitimate negotiating practices between [MVPDs] and programming vendors.'' The Commission's procedures generally provide for resolution of a program carriage complaint in one of four ways: (i) If the Media Bureau determines that the complainant has not made a *prima facie* showing in its complaint of a violation of the program carriage rules, the Media Bureau will dismiss the complaint; (ii) if the Media Bureau determines that the complainant has made a *prima facie* showing and the record is sufficient to resolve the complaint, the Media Bureau will rule on the merits of the complaint based on the pleadings without discovery; (iii) if the Media Bureau determines that the complainant has made a *prima facie* showing but the record is not sufficient to resolve the complaint, the Media Bureau will outline procedures for discovery before proceeding to rule on the merits of the complaint; and (iv) if the Media Bureau determines that the complainant has made a *prima facie* showing but the disposition of the complaint or discrete issues raised in the complaint will require resolution of factual disputes in an adjudicatory hearing or extensive discovery, the Media Bureau will refer the proceeding or discrete issues arising in the proceeding for an adjudicatory hearing before an ALJ. The Commission decided that appropriate relief for violations of the program carriage rules would be determined on a case-by-case basis, and could include forfeitures, mandatory carriage, or carriage on terms revised or specified by the Commission.[11]

7. In June 2007, the Commission released the *Program Carriage NPRM* seeking comment on revisions to the Commission's program carriage rules and complaint procedures. The Commission sought comment on whether and how the processes for resolving program carriage complaints should be modified; whether the elements of a *prima facie* case should be clarified; whether the deadline for resolving the program carriage complaint at issue in the *MASN I HDO* or a similar deadline should apply to all program carriage complaints; and whether additional rules are necessary to protect programming vendors from potential retaliation for filing a program carriage complaint.

III. Second Report and Order in MB Docket No. 07–42

8. As discussed below, the record reflects that our current program carriage procedures are ineffective and in need of reform.[12] Among other concerns, programming vendors and other commenters cite uncertainty concerning the evidence a complainant must provide to establish a *prima facie* case, [13] unpredictable delays in the

[10] 47 U.S.C. 536. A ''video programming vendor'' is defined as ''a person engaged in the production, creation, or wholesale distribution of video programming for sale.'' 47 U.S.C. 536(b).

[11] *See 1993 Program Carriage Order,* 9 FCC Rcd at 2653, para. 26. Eleven program carriage complaints have been filed in the approximately two decades since Congress passed section 616 in the 1992 Cable Act, two of which are currently pending before an ALJ or the Media Bureau. *See The Tennis Channel Inc.* v. *Comcast Cable Communications, LLC,* Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture, 25 FCC Rcd 14149 (MB 2010) (''*Tennis Channel HDO*''); *Bloomberg, L.P.* v. *Comcast Cable Communications, LLC,* MB Docket No. 11–104 (filed June 13, 2011). In addition, the Commission has resolved on the merits a program carriage claim arising through the program carriage arbitration condition applicable to Regional Sports Networks (''RSNs'') adopted in the *Adelphia Order. See TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network* v. *Time Warner Cable Inc.,* Order on Review, 23 FCC Rcd 15783 (MB 2008), *reversed by* Memorandum Opinion and Order, 25 FCC Rcd 18099 (2010) (''*MASN* v. *Time Warner Cable*''), *appeal pending sub nom. TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network* v. *FCC,* No. 11–1151 (4th Cir.).

[12] *See Ex Parte* Reply Comments of HDNet (June 2, 2010) at 6 (''A right without an effective remedy is like having no right at all. Today, neither MVPDs nor independent programmers have reason to think that a possible statutory violation will be redressed by the FCC in a timely and effective manner.''); Comments of Black Television News Channel, LLC at 4 (''BTNC Comments''); Comments of National Alliance of Media Arts and Culture *et al.* at 18–19 (''NAMAC Comments''); Comments of NFL Enterprises LLC at 6–8 (''NFL Enterprises Comments''); Comments of The America Channel at 9–11 (''TAC Comments''); Reply Comments of Crown Media Holdings, Inc. at 10–11 (''Hallmark Channel Reply''); Reply Comments of HDNet at 1 (''HDNet Reply''); Reply Comments of National Alliance of Media Arts and Culture *et al.* at 18–19 (''NAMAC Reply''); Reply Comments of NFL Enterprises LLC at 5–6 (''NFL Enterprises Reply''); Reply Comments of WealthTV at 1–2 (''WealthTV Reply''); *see also* Letter from Stephen A. Weiswasser, Counsel for the Outdoor Channel, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07–42 (Nov. 16, 2007) at 2 (''Outdoor Channel Nov. 16, 2007 *Ex Parte* Letter''); Letter from Larry F. Darby, American Consumer Institute, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07–42 (Nov. 20, 2007) at 14 (''ACI Nov. 20, 2007 *Ex Parte* Letter''); Letter from David S. Turetsky, Counsel for HDNet LLC, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07–42 (Nov. 20, 2007) at 1–2 (''HDNet Nov. 20, 2007 *Ex Parte* Letter''); Letter from Kathleen Wallman, Counsel for National Association of Independent Networks (''NAIN''), to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07–42 (June 5, 2008), Attachment (''NAIN June 5, 2008 *Ex Parte* Letter''); Letter from John Lawson, Executive Vice President, ION Media Networks, to Kevin J. Martin, Chairman, FCC, MB Docket No. 07–42 (Dec. 11, 2008), Attachment at 1 (''ION Dec. 11, 2008 *Ex Parte* Letter''). Members of Congress have also expressed concern with the program carriage complaint process. *See* Letter from Kathleen Wallman, Counsel for WealthTV, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07–42 (Aug. 4, 2008) (''WealthTV Aug. 4, 2008 *Ex Parte* Letter'') (attaching Letter from U.S. Sen. Kay Bailey Hutchison to Kevin J. Martin, Chairman, FCC (July 27, 2008) at 1 (expressing continued concern that ''the existing dispute resolution processes are not encouraging the timely resolution of these disputes or providing the proper incentives for the parties to negotiate terms'')); *id.* (attaching Letter from U.S. Sen. Amy Klobuchar to Kevin J. Martin, Chairman, FCC (July 24, 2008) at 1 (''Without an effective and timely FCC process to decide complaints * * * the integrity of any safeguards against program carriage discrimination is undermined.'')); Letter from David S. Turetsky, Counsel for HDNet LLC, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07–42 (July 22, 2008) (''HDNet July 22, 2008 *Ex Parte* Letter'') (attaching Letter from U.S. Sen. Herb Kohl to Kevin J. Martin, Chairman, FCC (June 23, 2008) at 2 (urging the Commission ''to strengthen the program carriage rules and to simplify and make more efficient the process by which program carriage complaints are adjudicated'')); *id.* (attaching Letter from U.S. Reps. Gene Green, Mike Doyle, and Charles Gonzalez to Kevin J. Martin, Chairman, FCC (June 30, 2008) at 1–2 (''The current complaint process is not as efficient as it could be * * * . [W]e urge you to provide more effective remedies and streamline the complaint process * * * .'')).

[13] *See* TAC Comments at 10; NAMAC Reply at 18–19; WealthTV Reply at 1; NAIN June 5, 2008 *Ex Parte* Letter, Attachment at 1; Letter from Harold Feld, Counsel for NAMAC *et al.,* to Marlene H.

Commission's resolution of complaints,[14] and fear of retaliation [15] as impeding the filing of legitimate program carriage complaints. While MVPDs contend that the limited number of program carriage complaints filed to date demonstrates that the current procedures are working and that rule changes are not necessary, [16] programming vendors contend that the lack of complaints is a direct result of our inadequate procedures, not a lack of program carriage claims.[17] As discussed below, we take initial steps to improve these procedures by: (i) Codifying in our rules what a program carriage complainant must demonstrate in its complaint to establish a *prima facie* case of a program carriage violation; (ii) providing the defendant with 60 days (rather than the current 30 days) to file an answer to a program carriage complaint; (iii) establishing deadlines for action by the Media Bureau and an ALJ when acting on program carriage complaints; and (iv) establishing procedures for the Commission's consideration of requests for a temporary standstill of the price, terms, and other conditions of an existing programming contract by a program carriage complainant seeking renewal of such a contract.

A. Prima Facie Case

9. In the *1993 Program Carriage Order,* the Commission described the evidence a program carriage complainant must provide in its complaint to establish a *prima facie* case. Among other things, the Commission stated that the ''complaint must be supported by documentary evidence of the alleged violation, or by an affidavit (signed by an authorized representative or agent of the complaining programming vendor) setting forth the basis for the complainant's allegations.'' The Commission also emphasized that the complaint ''may not merely reflect conjecture or allegations based only on information and belief.'' The record reflects that programming vendors are uncertain as to what evidence must be provided in a complaint to meet the *prima facie* requirement.[18] The National Association of Independent Networks (''NAIN''), for example, notes that our rules do not contain a definition of what constitutes a *prima facie* case and that this lack of clarity impedes programming vendors from asserting their program carriage rights through the complaint process.[19]

10. While one commenter notes that the *prima facie* step is not required by the statute and urges the Commission to eliminate this step entirely,[20] we believe that retaining this requirement is important to dispose promptly of frivolous complaints and to ensure that only legitimate complaints proceed to further evidentiary proceedings. We agree, however, that clarifying what is required to establish a *prima facie* case and codifying these requirements in our rules will help to reduce uncertainty regarding the *prima facie* requirement. In the following paragraphs, we clarify the requirements for establishing a *prima facie* case.

11. As an initial matter, all complaints alleging a violation of any of the program carriage rules (*i.e.,* the financial interest, exclusivity, or discrimination provisions) must contain evidence that (i) the complainant is a video programming vendor as defined in section 616(b) of the Act and § 76.1300(e) of the Commission's rules or an MVPD as defined in section 602(13) of the Act and § 76.1300(d) of the Commission's rules; [21] and (ii) the defendant is an MVPD as defined in section 602(13) of the Act and § 76.1300(d) of the Commission's rules. We note that, as originally adopted in the *1993 Program Carriage Order,* the Commission's rules provided that a complaint must contain the ''address and telephone number of the

Dortch, Secretary, FCC, MB Docket No. 07–42 (May 2, 2008) at 1 (''NAMAC May 2, 2008 *Ex Parte* Letter'').

[14] *See* Letter from Jonathan D. Blake, Counsel for the National Football League, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07–42 (Nov. 5, 2009) at 2 (''Based on the experience in the now-settled NFL Network/Comcast hearing, the NFL believes that the Commission's processes are too slow * * *.''); BTNC Comments at 4; TAC Comments at 9; Letter from David S. Turetsky, Counsel for HDNet, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07–42 (June 16, 2010), at 5 (''HDNet June 16, 2010 *Ex Parte* Letter''); *see also* NAMAC Comments at 18; HDNet Reply at 1; NFL Enterprises Reply at 8; WealthTV Reply at 1; ION Dec. 11, 2008 *Ex Parte* Letter, Attachment at 1; NAIN June 5, 2008 *Ex Parte Letter,* Attachment at 1.

[15] *See* BTNC Comments at 4; NAMAC Comments at 18–19; NFL Enterprises Comments at 8 n.28; NFL Enterprises Reply at 6; NAIN June 5, 2008 *Ex Parte* Letter, Attachment at 1.

[16] *See* Comments of Comcast Corporation at 27, 33 (''Comcast Comments''); Comments of the National Cable and Telecommunications Association at 14–15 (''NCTA Comments''); Comments of Time Warner Cable Inc. at 27–29 (''TWC Comments''); Reply Comments of Comcast Corporation at 21–23 (''Comcast Reply''); Reply Comments of the National Cable and Telecommunications Association at 18–19 (''NCTA Reply''); Reply Comments of Time Warner Cable Inc. at 2–3 (''TWC Reply''); Reply Comments of Verizon at 9–10 (''Verizon Reply'').

[17] *See* Letter from Stephen A. Weiswasser, Counsel for the Hallmark Channel, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07–42 (Nov. 6, 2007) at 1–2 (''[T]he absence of complaints under the existing program carriage regime is not evidence of lack of discrimination, but, to the contrary, a reflection of the difficulties presented to independents by the high burdens of going forward under the existing rules and the prospects for retaliation by MVPDs.'') (''Hallmark Channel Nov. 6, 2007 *Ex Parte* Letter''); *see also* BTNC Comments at 4 (citing fear of retaliation, unpredictable cost and delay, and uncertainty regarding evidence required and adequacy of relief as reasons for why few program carriage complaints have been filed to date); Hallmark Channel Reply at 11 (''[I]t simply is not the case that only two programmers have experienced discrimination during the time the rules have been in effect. The reality is that programmers do not bring complaints under the existing rules because of their high burden of proof with respect to predatory practices, the difficulty of fashioning meaningful resolutions, and the fear of retribution, not because discrimination does not, in fact, occur.'').

[18] *See* TAC Comments at 10 (''[T]here are no clear guidelines on what constitutes a *prima facie* case of discrimination.''); NAMAC Reply at 18–19 (''[T]he current *prima facie* case requirement actively prevents the Commission from fulfilling the statutory command to resolve complaints 'expeditiously.' Similarly, evidence in the record from independent programmers demonstrates that the *prima facie* case requirement may dissuade independent programmers from bringing genuine complaints due to confusion over the appropriate standard * * *.''); WealthTV Reply at 1 (''It is critical for independent programmers to know exactly what kind of evidence, and how much evidence, they need to present to move forward with a complaint.''); *see also* HDNet July 22, 2008 *Ex Parte* Letter (attaching Letter from U.S. Reps. Gene Green, Mike Doyle, and Charles Gonzalez to Kevin J. Martin, Chairman, FCC (June 30, 2008) at 2 (urging the Commission to adopt a ''better defined and more reasonable definition of a *prima facie* case''); NAMAC May 2, 2008 *Ex Parte* Letter at 1 (''If the Commission elects to retain the *prima facie* screen, the Commission must clarify what applicants must prove to meet this burden * * * .'').

[19] *See* NAIN June 5, 2008 *Ex Parte* Letter, Attachment (''Currently, there is no definition in the rules of what constitutes a *prima facie* case. Consequently, defendants argue their own versions of the standard to try to get independent programmers' complaints dismissed. This lack of clarity is a problem for independent programmers who are in litigation before the Commission, and for programmers who are contemplating litigation to vindicate their rights.'').

[20] *See* NAMAC Reply at 18 (''[T]he Commission adopted the requirement to establish a *prima facie* case solely on the basis of its own initiative.* * * [N]othing in section 616 requires the Commission to use a *prima facie* case requirement to limit the number of potentially frivolous complaints.'').

[21] *See 1993 Program Carriage Order,* 9 FCC Rcd at 2654, para. 29; *see also* 47 U.S.C. 522(13), 536(b); 47 CFR 76.1300(d), (e). In the *1994 Program Carriage Order,* the Commission amended the program carriage rules to allow MVPDs, in addition to video programming vendors, to file complaints alleging a violation of the program carriage rules. *See 1994 Program Carriage Order,* 9 FCC Rcd at 4418–20, paras. 24–33. The Commission expressed concern that a video programming vendor that had been coerced into granting anticompetitive concessions, including exclusivity, to a cable operator might be dissuaded from filing a program carriage complaint based on fears of alienating the cable operator. *See id.* at 4416, para. 10 and 4420, paras. 30–31. Accordingly, the Commission amended its rules to provide MVPDs aggrieved by a violation of section 616 to file a program carriage complaint with the Commission. *See id.* at 4415, para. 3 and 4418–19, para. 24.

complainant, the type of multichannel video programming distributor that describes the defendant, and the address and telephone number of the defendant.'' In 1999, the Commission reorganized the part 76 pleading and complaint process rules and, in the course of doing so, amended this rule to require the complaint to contain the ''type of multichannel video programming distributor that describes complainant, the address and telephone number of the complainant, and the address and telephone number of each defendant.'' We find this revised language confusing because it fails to reflect that a program carriage complainant can be either an MVPD or a video programming vendor. We amend this rule to clarify that the complaint must specify ''whether the complainant is a multichannel video programming distributor or video programming vendor, and, in the case of a multichannel video programming distributor, identify the type of multichannel video programming distributor, the address and telephone number of the complainant, what type of multichannel video programming distributor the defendant is, and the address and telephone number of each defendant.''

12. Evidence supporting a program carriage claim may be based on an explicit or implicit threat.[22] In complaints alleging a violation of the exclusivity or financial interest provisions, the complaint must contain direct evidence (either documentary or testimonial) supporting the facts underlying the claim. For example, a complainant alleging that an MVPD has coerced a programming vendor to grant exclusive carriage rights or required a financial interest in a program service must provide documentary evidence, such as an e-mail from the defendant MVPD, documenting the prohibited action, or an affidavit from a representative of the programming vendor involved in the relevant carriage negotiations detailing the facts supporting the alleged violation of the program carriage rules.

13. For complaints alleging a violation of the discrimination provision, however, direct evidence supporting a claim that the defendant MVPD discriminated ''on the basis of affiliation or non-affiliation'' is sufficient to establish this element of a *prima facie* case but is not required. For example, an e-mail from the defendant MVPD stating that the MVPD took an adverse carriage action against the programming vendor because it is not affiliated with the MVPD will generally be sufficient to establish this element of a *prima facie* case. However, such documentary evidence is highly unlikely to be available to a programming vendor in advance of discovery, and may not exist at all.[23] In addition, an affidavit from a representative of the programming vendor involved in the relevant carriage negotiations detailing the facts supporting a claim that a representative of the defendant MVPD informed the vendor that the MVPD took an adverse carriage action because the vendor is not affiliated with the MVPD will generally be sufficient to establish this element of a *prima facie* case. Again, however, we recognize that such direct evidence of affiliation-based discrimination will seldom be available to complainants and is not required to establish this element of a *prima facie* case.

14. Because it is unlikely that direct evidence of a discriminatory motive will be available to potential complainants,[24] we clarify that a complainant can establish this element of a *prima facie* case of a violation of the program carriage discrimination provision by providing the following circumstantial evidence of discrimination ''on the basis of affiliation or non-affiliation.'' First, the complainant programming vendor must provide evidence that it provides video programming that is similarly situated to video programming provided by a programming vendor affiliated with the defendant MVPD,[25] based on a combination of factors, such as genre, ratings, license fee, target audience, target advertisers, target programming,[26] and other factors.[27] We emphasize that a finding at the *prima facie* stage that affiliated and unaffiliated video programming is similarly situated should be based on examination of a combination of factors put forth by the complainant. Although no single factor is necessarily dispositive, the more factors that are found to be similar, the more likely the programming in question will be considered similarly situated to the affiliated programming. On the other hand, it is unlikely that programming would be considered ''similarly situated'' if only one of these factors is found to be similar. For example, a complainant is unlikely to establish a *prima facie* case of

[22] *See 1993 Program Carriage Order,* 9 FCC Rcd at 2650, para. 18 (''[W]e reject TCI's suggestion that we should require evidence of explicit threats, because we believe that actual threats may not always comprise a necessary condition for a finding of coercion. Requiring such evidence would establish an unreasonably high burden of proof that could undermine the intent of section 616 by allowing multichannel distributors to engage in bad faith negotiations that apparently would not violate the statute and our regulations simply because explicit threats were not made during such negotiations. In contrast, we believe that section 616(a)(2) was intended to prohibit implicit as well as explicit behavior that amounts to 'coercion.' '').

[23] *See* Hallmark Channel Reply at 10 (''[D]iscrimination is often subtle, and the evidence of its existence is likely outside the control of an independent programmer.''); NFL Enterprises Reply at 5–6 (''[T]he best evidence of discriminatory motive is under the exclusive control of the MVPD * * *. [V]ertically integrated MVPDs are determined not to provide potential complainants with direct evidence of the underlying purpose of their discriminatory conduct.'').

[24] *See* NFL Enterprises Reply at 6 (stating that requiring only documentary evidence of improper motive before a programmer can file a complaint ''would make it extremely difficult to bring any complaint, since * * * vertically integrated MVPDs are skillful at ensuring that the best evidence of discrimination—and the only evidence of discriminatory intent—is found only in the control of the MVPD''); Outdoor Channel Nov. 16 2007 *Ex Parte* Letter at 2 (''Because evidence of predatory intent is commonly controlled by the MVPD, and not the programmer, it is unrealistic to expect a programmer to have clear evidence of predation before it can bring a claim.'').

[25] In the *1993 Program Carriage Order,* the Commission interpreted the discrimination provision in section 616(a)(3) to require a complainant alleging discrimination that favors an ''affiliated'' programming vendor to provide evidence that the defendant MVPD has an attributable interest in the allegedly favored ''affiliated'' programming vendor. *See 1993 Program Carriage Order,* 9 FCC Rcd at 2654, para. 29 (''For complaints alleging discriminatory treatment that favors 'affiliated' programming vendors, the complainant must provide evidence that the defendant has an attributable interest in the allegedly favored programming vendor, as set forth in § 76.1300(a).''); *see also* 47 CFR 76.1300(a) (''For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.''); *Review of the Commission's Cable Attribution Rules,* Report and Order, 14 FCC Rcd 19014, 19063, para. 132 n.333 (1999) (amending definition of ''affiliated'' in the program carriage rules to be consistent with definition of this term in other cable rules); *but see NPRM* in MB Docket No. 11–131, paras. 72–77 (seeking comment on whether to interpret the discrimination provision in section 616(a)(3) more broadly to preclude a vertically integrated MVPD from discriminating on the basis of a programming vendor's lack of affiliation with another MVPD).

[26] By ''target programming,'' we refer to programming rights that a video programming vendor seeks to acquire to display on its network.

[27] The Media Bureau will assess on a case-by-case basis whether the complaint contains evidence to establish at the *prima facie* stage that the affiliated and unaffiliated video programming is similarly situated. In previous cases assessing at the *prima facie* stage whether the complaint contains evidence that the affiliated and unaffiliated video programming is similarly situated, the Media Bureau has assessed similar factors. *See Tennis Channel HDO,* 25 FCC Rcd at 14159–60, paras. 17–18; *Herring Broadcasting Inc., d/b/a WealthTV, et al.,* Memorandum Opinion and Hearing Designation Order, 23 FCC Rcd 14787, 14795–97, paras. 12–17 (MB 2008) (''*WealthTV HDO*''); *NFL Enters. LLC* v. *Comcast Cable Communications, LLC,* Memorandum Opinion and Hearing Designation Order, 23 FCC Rcd 14787, 14822–23, para. 75 (MB 2008) (''*NFL Enterprises HDO*''); *TCR Sports Broadcasting Holding, LLP, d/b/a Mid-Atlantic Sports Network* v. *Comcast Corp.,* Memorandum Opinion and Hearing Designation Order, 23 FCC Rcd 14787, 14835–36, para. 108 (MB 2008) (''*MASN II HDO*'').

discrimination on the basis of affiliation by demonstrating that the defendant MVPD carries an affiliated music channel targeted to younger viewers but has declined to carry an unaffiliated music channel targeted to older viewers with lower ratings and a higher license fee. Second, the complaint must contain evidence that the defendant MVPD has treated the video programming provided by the complainant programming vendor differently than the similarly situated video programming provided by the programming vendor affiliated with the defendant MVPD with respect to the selection, terms, or conditions for carriage.[28] In the absence of direct evidence supporting the claim that the defendant MVPD discriminated ''on the basis of affiliation or non-affiliation,'' the circumstantial evidence discussed here will establish this element of a *prima facie* case of a violation of the program carriage discrimination provision.

15. In addition, we note that the program carriage discrimination provision prohibits only conduct that has ''the effect of * * * unreasonably restrain[ing] the ability of an unaffiliated video programming vendor to compete fairly.'' Thus, regardless of whether the complainant relies on direct or circumstantial evidence of discrimination ''on the basis of affiliation or non-affiliation,'' the complaint must also contain evidence that the defendant MVPD's conduct has the effect of unreasonably restraining the ability of the complainant programming vendor to compete fairly.[29]

16. We emphasize that a Media Bureau finding that a complainant has established a *prima facie* case does not mean that the complainant has proven its case or any elements of its case on the merits. Rather, a *prima facie* finding means that the complainant has provided sufficient evidence in its complaint, without the Media Bureau having considered any evidence to the contrary, to proceed. If the complainant establishes a *prima facie* case but the record is not sufficient to resolve the complaint, the adjudicator (*i.e.,* either the Media Bureau or an ALJ) will allow the parties to engage in discovery [30] and will then conduct a *de novo* examination of all relevant evidence on each factual and legal issue. For example, although the Media Bureau may find that a complaint contains sufficient evidence to establish a *prima facie* case that a defendant MVPD's conduct has the effect of unreasonably restraining the ability of the complainant programming vendor to compete fairly, thus allowing the case to proceed, the adjudicator when ruling on the merits may reach an opposite conclusion after conducting further proceedings and developing a more complete evidentiary record.[31]

17. We also clarify that the Media Bureau's determination of whether a complainant has established a *prima facie* case is based on a review of the complaint (including any attachments) only. If the Media Bureau determines that the complainant has established a *prima facie* case, the Media Bureau will then review the answer (including any attachments) and reply to determine whether there are procedural defenses that might warrant dismissal of the case (*e.g.,* arguments pertaining to the statute of limitations); whether there are any issues that the defendant MVPD concedes; whether there are substantial and material questions of fact as to whether the defendant MVPD has engaged in conduct that violates the program carriage rules; whether the case can be addressed by the Media Bureau on the merits based on the pleadings or whether further evidentiary proceedings are necessary; and whether the proceeding should be referred to an ALJ in light of the nature of the factual disputes. For example, if the Media Bureau determines that the complainant has established a *prima facie* case but the defendant MVPD provides legitimate and non-discriminatory business reasons in its answer for its adverse carriage decision, the Media Bureau might conclude that there are substantial and material questions of fact that warrant allowing the parties to engage in discovery or referring the matter to an ALJ for an adjudicatory hearing, or it might conclude that the complaint can be resolved on the merits based on the pleadings.

B. Deadline for Defendant's Answer to a Program Carriage Complaint

18. Our current rule provides that an MVPD served with a program carriage complaint shall answer the complaint within 30 days of service. We amend this rule to provide an MVPD with 60 days to answer a program carriage complaint.[32] Having established specific evidentiary requirements for what the complainant must provide in its

[28] *See Tennis Channel HDO,* 25 FCC Rcd at 14160–61, para. 19; *WealthTV HDO,* 23 FCC Rcd at 14797, para. 18, 14801, para. 28, 14806, para. 40, 14812, para. 52; *NFL Enterprises HDO,* 23 FCC Rcd at 14823, para. 76; *MASN II HDO,* 23 FCC Rcd at 14836, para. 109; *MASN I HDO,* 21 FCC Rcd at 8993–94, para. 11; *but see Hutchens Communications, Inc.* v. *TCI Cablevision of Georgia, Inc.,* Memorandum Opinion and Order, 9 FCC Rcd 4849, 4853, para. 27 (CSB 1994) (finding that complainant programming vendor did not make a *prima facie* showing of discrimination on the basis of affiliation because it failed to demonstrate that it was offered different price, terms, or conditions as compared to that offered to an affiliated programming vendor).

[29] *See 1993 Program Carriage Order,* 9 FCC Rcd at 2648, para. 14 (citing 47 U.S.C. 536(a)(3)). The Media Bureau will assess on a case-by-case basis whether the complaint contains evidence at the *prima facie* stage to establish that the effect of the defendant MVPD's conduct is to unreasonably restrain the ability of the complainant video programming vendor to compete fairly. In previous cases, the Media Bureau has made this assessment based on the impact of the defendant MVPD's adverse carriage action on the programming vendor's subscribership, licensee fee revenues, advertising revenues, ability to compete for advertisers and programming, and ability to realize economies of scale. *See Tennis Channel HDO,* 25 FCC Rcd at 14161–62, paras. 20–21; *WealthTV HDO,* 23 FCC Rcd at 14798, para. 19, 14802, paras. 29–31, 14807–08, paras. 41–42, 14812–13, paras. 53–54; *NFL Enterprises HDO,* 23 FCC Rcd at 14823–25, paras. 77–78; *MASN II HDO,* 23 FCC Rcd at 14836, para. 110; *MASN I HDO,* 21 FCC Rcd at 8993–94, para. 11.

[30] Under the current program carriage rules, discovery is Commission-controlled, meaning that Media Bureau staff identifies the matters for which discovery is needed and then issues letters of inquiry to the parties on those matters or requires the parties to produce specific documents related to those matters. *See 1993 Program Carriage Order,* 9 FCC Rcd at 2655–56, para. 32; *see also id.* at 2652, para. 23 (providing that discovery will ''not necessarily be permitted as a matter of right in all cases, but only as needed on a case-by-case basis, as determined by the staff''); *see also* 47 CFR 76.7(f). In the *NPRM* in MB Docket No. 11–131, we propose to revise these procedures by providing for expanded discovery, whereby parties to a program carriage complaint may serve requests for discovery directly on opposing parties rather than relying on the Media Bureau staff to seek discovery through letters of inquiry or document requests. *See NPRM* in MB Docket No. 11–131, paras. 42–43. We also seek comment on an automatic document production process whereby both parties would have a certain period of time after the Media Bureau's *prima facie* determination to produce basic threshold documents listed in the Commission's rules that are relevant to the program carriage claim at issue. *See NPRM* in MB Docket No. 11–131, paras. 44–47.

[31] *Compare WealthTV HDO,* 23 FCC Rcd 14787 *with Herring Broadcasting Inc., d/b/a WealthTV, et al.,* Recommended Decision, 24 FCC Rcd 12967 (Chief ALJ Sippel 2009) (''*WealthTV Recommended Decision*'') *and Herring Broadcasting Inc., d/b/a WealthTV, et al.,* Memorandum Opinion and Order, FCC 11–94 (2011) (''*WealthTV Commission Order*''). We note, however, the Media Bureau in the course of making a *prima facie* determination may rule on the merits of certain elements of the case based on the pleadings and refrain from referring these specific issues for further evidentiary proceedings. For example, to the extent that the parties concede that the complainant is a video programming vendor and the defendant is an MVPD, further evidentiary proceedings on these issues are unnecessary.

[32] *See* Letter from Ryan G. Wallach, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07–42 (Dec. 10, 2008), Attachment at 2 (urging the Commission to allow defendants 60 days to file an answer); Letter from Arthur H. Harding, Counsel for Time Warner Cable, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07–42 (June 1, 2011), at 2 (stating that a program carriage defendant needs a full and fair opportunity to respond to a complaint) (''Time Warner Cable June 1 2011 *Ex Parte* Letter'').

complaint to establish a *prima facie* case of a program carriage violation, we believe it is appropriate to provide the defendant with additional time to answer the complaint in order to develop a full, case-specific response, with supporting evidence, to the evidence put forth by the complainant. As discussed in the next section, Congress directed the Commission to ''provide for expedited review'' of program carriage complaints, and we adopt deadlines herein for the Media Bureau and ALJs when acting on program carriage complaints to satisfy this requirement. Providing additional time for a defendant to file an Answer to a complaint does not conflict with this requirement. By requiring a complainant to provide specific evidence in its complaint and providing a defendant with additional time to respond to this evidence and provide specific evidence supporting its response, the rules we adopt today will allow for the development of a more robust factual record earlier in the complaint process than under our current rules. We believe that this will better enable the Media Bureau to either resolve cases on the merits based on the pleadings without referring the matter to an ALJ, or narrow the factual issues in dispute that warrant discovery or referral to an ALJ. As a result, this will lead to the more expeditious resolution of disputes than under other current program carriage complaint procedures.

C. Deadlines for Media Bureau and ALJ Decisions

19. The record reflects that the unpredictable and sometimes lengthy time frames for Commission action on program carriage complaints have discouraged programming vendors from filing complaints.[33] Both programming vendors [34] and MVPDs support expeditious action on program carriage complaints. We believe that establishing deadlines for the Media Bureau and ALJs when acting on program carriage complaints will help to resolve disputes quickly and efficiently and thus fulfill our statutory mandate to ''provide for expedited review'' of program carriage complaints. While the Commission in the *1993 Program Carriage Order* directed both the Media Bureau and ALJs to resolve cases ''expeditiously,'' we now conclude that a specific deadline codified in our rules is needed to ensure that this goal is achieved.[35]

20. Action on program carriage complaints entails a two-step process: The initial *prima facie* determination by the Media Bureau, followed (if necessary) by a decision on the merits by an adjudicator (*i.e.,* either the Media Bureau or an ALJ).[36] We adopt deadlines herein for both of these steps. For the first step, we direct the Media Bureau to release a decision determining whether the complainant has established a *prima facie* case within 60 calendar days after the complainant's reply to the defendant's answer is filed (or the date on which the reply would be due if none is filed). Based on our past experience in addressing program carriage complaints, we believe that 60 calendar days after the complainant files its reply [37] provides sufficient time for the Media Bureau to make a *prima facie* determination while providing for the ''expedited review'' required by Congress. In light of this expedited timeframe for the Media Bureau's *prima facie* determination, we again emphasize that complainants should not raise new matters in a reply [38] and that additional pleadings outside of the pleading cycle will not be accepted.[39]

21. For the second step, we impose different deadlines for a ruling on the merits of the complaint depending upon whether the adjudicator is the Media Bureau or an ALJ. After the Media Bureau concludes that the complaint contains sufficient evidence to establish a *prima facie* case, the Media Bureau has three options for addressing the merits of the complaint: (i) The Media Bureau can rule on the merits of the complaint based on the pleadings without discovery; [40] (ii) if the Media Bureau determines that the record is not sufficient to resolve the complaint, the Media Bureau may outline procedures for discovery before proceeding to rule on the merits of the complaint; [41] or (iii) if the Media Bureau determines that disposition of the complaint or discrete issues raised in the complaint requires resolution of factual disputes or other extensive discovery in an adjudicatory proceeding, the Media Bureau will refer the proceeding or discrete issues arising in the proceeding for an adjudicatory

[33] *See* TAC Comments at 9 (''Faced with the likelihood of FCC inaction, combined with the real risk of retaliation by cable operators, [] no independent channel would want to file with the FCC.''); HDNet June 16 2010 *Ex Parte* Letter at 5 (''Independent programmers simply cannot commence proceedings against potential carriers, even in cases of clear misconduct, unless these proceedings are truly expedited, as Congress directed, because they risk retaliation and, for some independent programmers, financially ruinous delays in acquiring carriage for their programming.''); *see also* BTNC Comments at 4.

[34] *See* TAC Comments at 9 (requesting that the Commission provide a ''shot clock,'' such as a requirement that the Commission hear and resolve the complaint within 60 to 90 days); NFL Enterprises Reply at 8 (explaining that, given the time-sensitivity of program carriage disputes, it is critical that the Commission adopt a streamlined complaint process and an expedited timeline for dispute resolution); HDNET Reply at 1 (endorsing an expedited complaint resolution process); WealthTV Reply at 1 (same); *see also* NAMAC Comments at 18; ION Dec. 11 2008 *Ex Parte* Letter, Attachment at 1; NAIN June 5 2008 *Ex Parte* Letter, Attachment at 1; HDNet July 22 2008 *Ex Parte* Letter (attaching Letter from U.S. Sen. Herb Kohl to Kevin J. Martin, Chairman, FCC (June 23, 2008) at 2 (''I urge that the FCC set a deadline by which program carriage complaints by programmers be decided in prompt and reasonable time * * *.'')); *id.* (attaching Letter from U.S. Sen. Byron L. Dorgan to Kevin J. Martin, Chairman, FCC (June 13, 2008) at 1 (''I worry that while the FCC has a shot clock for consideration of forbearance petitions, in a separate area of programming discrimination, the Commission lacks any type of timeline.'')); *id.* (attaching Letter from U.S. Reps. Gene Green, Mike Doyle, and Charles Gonzalez to Kevin J. Martin, Chairman, FCC (June 30, 2008) at 2 (urging the Commission to adopt a ''shot clock'')).

[35] *See 1993 Program Carriage Order,* 9 FCC Rcd at 2655–56, para. 32 (directing Media Bureau staff to ''develop a discovery process and timetable to resolve the dispute expeditiously''); *see id.* at 2656, para. 34 (''ALJs are expected to resolve program carriage complaints expeditiously, and should hold an immediate status conference to establish timetables for discovery, hearing and submission of briefs and proposed findings of fact and conclusions of law.'').

[36] A potential third step applies to the extent a party appeals the decision of the Media Bureau or an ALJ to the Commission. *See* 47 CFR 1.115, 76.10(c)(1) (pertaining to Applications for Review of actions taken on delegated authority); 47 CFR 1.276, 76.10(c)(2) (pertaining to exceptions to initial decisions of an ALJ). We decline at this time to establish a deadline for Commission action on review of decisions by the Media Bureau or an ALJ.

[37] As amended herein, the program carriage rules provide for a 80-calendar-day initial pleading cycle (*i.e.,* a 60-calendar-day period for filing an answer to a complaint and a 20-calendar-day period for filing a reply to the answer). *See* 47 CFR 76.1302(e)(1), (f).

[38] *See* 47 CFR 76.1302(e) (stating that a reply ''shall be responsive to matters contained in the answer and shall not contain new matters'').

[39] *See 1993 Program Carriage Order,* 9 FCC Rcd at 2652, para. 23 (''Given the statute's explicit direction to the Commission to handle program carriage complaints expeditiously, additional pleadings will not be accepted or entertained unless specifically requested by the reviewing staff.''); *see id.* at 2654–55, para. 30 n.51 (''[U]nless specifically requested by the Commission or its staff, additional pleadings such as motions to dismiss or motions for summary *judgment will not be considered.* We intend to keep pleadings to a minimum to comply with the statutory directive for an expedited adjudicatory process.'') (emphasis in original).

[40] *See id.* at 2652, para. 23 (''[W]e hereby adopt a system that promotes resolution of as many cases as possible on the basis of a complaint, answer and reply.''); *but see id.* at 2652, para. 24 (''As a practical matter, however, given that alleged violations of section 616, especially those involving potentially 'coercive' practices, will require an evaluation of contested facts and behavior related to program carriage negotiations, we believe that the staff will be unable to resolve most program carriage complaints on the sole basis of a written record as described above. Rather, we anticipate that resolution of most program carriage complaints will require an administrative hearing to evaluate contested facts related to the parties' specific negotiations.'').

[41] *See id.* at 2655–56, paras. 31–33; *see also* 47 CFR 76.7(f).

hearing before an ALJ.[42] We establish the following deadlines for the adjudicator's decision on the merits. For complaints that the Media Bureau decides on the merits based on the pleadings without discovery, the Media Bureau must release a decision within 60 calendar days after its *prima facie* determination. We believe this timeframe is sufficient to allow the Media Bureau to review the record and draft and release a decision on the merits. For complaints that the Media Bureau decides on the merits after discovery is conducted, the Media Bureau must release a decision within 150 calendar days after its *prima facie* determination. We believe this timeframe is sufficient to allow for the entry of a protective order, discovery, and the submission of supplemental briefs and other information required by the Media Bureau, as well as for the Media Bureau to review the record and draft and release a decision on the merits. For complaints referred to an ALJ for a decision on the merits, we believe that a longer timeframe is warranted to allow for, among other things, the preparation for and conduct of a fair hearing, the submission of proposed findings of fact and conclusions of law, and the ALJ's preparation of an initial decision and, if necessary, formulation of a remedy. Accordingly, we direct the ALJ to release an initial decision within 240 calendar days after one of the parties informs the Chief ALJ that it elects not to pursue ADR or, if the parties have mutually elected to pursue ADR, within 240 calendar days after the parties inform the Chief ALJ that they have failed to resolve their dispute through ADR.[43] To the extent that the Media Bureau refers only discrete issues raised in the proceeding to the ALJ rather than the entire proceeding, we expect that the ALJ will be able to act in less than 240 calendar days. We note that the Commission has previously stated that ''[t]ime limits on the ALJs are permissible so long as they do not unduly interfere with a judge's independence to control the course of the proceeding * * * or subject the judge to performance appraisals.'' [44] We do not believe that the 240-calendar-day deadline adopted herein will unduly interfere with the ALJ's independence, and this deadline will not be used for performance appraisals.[45]

22. We also amend certain procedural deadlines applicable to adjudicatory hearings to reflect that an adjudicatory hearing involving a program carriage complaint does not commence until a party elects not to pursue ADR pursuant to § 76.7(g)(2) or, if the parties have mutually elected to pursue ADR, the parties fail to resolve their dispute through ADR. We also adopt expedited deadlines to account for the 240-calendar-day deadline for the ALJ's initial decision. First, we revise the deadline for filing a written appearance in a program carriage matter referred to an ALJ. Section 1.221(c) of the Commission's rules provides that a written appearance must be filed within 20 days of the mailing of the HDO. We amend this rule to provide that, in a program carriage complaint proceeding that the Media Bureau refers to an ALJ, a party must file a written appearance within five calendar days after the party informs the Chief ALJ that it elects not to pursue ADR or, if the parties have mutually elected to pursue ADR, within five calendar days after the parties inform the Chief ALJ that they have failed to resolve their dispute through ADR. Because the parties would have already been involved in a complaint proceeding before the Media Bureau resulting in the *prima facie* determination and will have had the opportunity to retain counsel for litigating the complaint before the Media Bureau, we believe that reducing the time for filing a written appearance in a program carriage matter referred to an ALJ from 20 to five days is reasonable. We also amend our rules to specify the consequences of failing to timely file a written appearance in a program carriage matter referred to an ALJ. If the complainant fails to file a written appearance by this deadline, or fails to file prior to the deadline either a petition to dismiss the proceeding without prejudice or a petition to accept, for good cause shown, a written appearance beyond such deadline, the Chief ALJ shall dismiss the complaint with prejudice for failure to prosecute. If the defendant fails to file a written appearance by this deadline, or fails to file prior to this deadline a petition to accept, for good cause shown, a written appearance beyond such deadline, its opportunity to present evidence at hearing will be deemed to have been waived. If the hearing is so waived, the Chief ALJ will terminate the proceeding and certify to the Commission the complaint for resolution based on the existing record. Second, we revise the deadline for filing a motion to enlarge, change, or delete issues. Section 1.229(a) provides that a motion to enlarge, change, or delete issues shall be filed within 15 days after the HDO is published in the **Federal Register.** We amend this rule to provide that, in a program carriage complaint proceeding that the Media Bureau refers to an ALJ, a motion to enlarge, change, or delete issues shall be filed within 15 calendar days after the deadline for filing a written notice of appearance. Third, we revise the deadline for holding an initial prehearing conference. Section 1.248 of the Commission's rules provides that, to the extent an initial prehearing conference is scheduled, it shall be scheduled 30 days after the effective date of the HDO, unless good cause is shown for scheduling the conference at a later date. We amend this rule to provide that, to the extent the ALJ in a program carriage complaint proceeding conducts an initial prehearing conference, the conference shall be held no later than ten calendar days after the deadline for filing a written notice of appearance, or within such shorter or

[42] *See 1993 Program Carriage Order,* 9 FCC Rcd at 2652, para. 24 and 2656, para. 34; *see also* 47 CFR 76.7(g)(1). In cases referred to an ALJ, the parties have ten days after the Media Bureau's *prima facie* determination to elect whether to attempt to resolve their dispute through ADR. *See* 47 CFR 76.7(g)(2); *see also 1993 Program Carriage Order,* 9 FCC Rcd at 2652, para. 24 and 2656, para. 34.

[43] § 76.7(g)(2) of the Commission's rules currently states that a party must submit in writing to the Commission its election as to whether to proceed to ADR. *See* 47 CFR 76.7(g)(2). We amend this rule to further specify that this election must also be submitted with the Chief ALJ.

[44] *See Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases,* Report and Order, 5 FCC Rcd 157, para. 40 n.26 (1990) (citing *Butz* v. *Economou,* 438 U.S. 478, 513 (1978) and 5 CFR 930.211) (''*1990 Comparative Hearing Order*'').

[45] We note that only one previous ALJ decision has addressed the merits of a program carriage complaint. *See WealthTV Recommended Decision.* In that case, the ALJ reached a decision one year after the Media Bureau's HDO. We do not believe this timeframe is necessarily reflective of the time required to reach a decision on the merits of a program carriage complaint given the unique circumstances of this case, including the following: (i) The case consolidated four separate complaints involving the same complainant against four separate defendant MVPDs; and (ii) the proceeding was delayed by the Media Bureau's decision to take back jurisdiction over the case, which was subsequently rescinded by the Commission. *See Herring Broadcasting Inc., d/b/a WealthTV, et al.,* Memorandum Opinion and Order, 23 FCC Rcd 18316 (MB 2008), *rescinded by Herring Broadcasting Inc., d/b/a WealthTV, et al.,* Order, 24 FCC Rcd 1581 (2009). Although the type and complexity of cases referred to ALJs vary considerably, we note that the ALJ has ruled within approximately 240 calendar days after referral in previous cases. *See Under His Direction, Inc.,* Initial Decision, 11 FCC Rcd 16831 (ALJ Luton 1996) (approximately eight months from HDO to ALJ's decision); *AJI Broad., Inc.,* Initial Decision, 11 FCC Rcd 19756 (ALJ Luton 1996) (approximately eight months from HDO to ALJ's decision); *Community Educ. Ass'n,* Initial Decision, 10 FCC Rcd 3179 (ALJ Chachkin 1995) (approximately eight months from HDO to ALJ's decision); *Aurio A. Matos,* Initial Decision, 8 FCC Rcd 7920 (ALJ Gonzalez 1993) (approximately seven months from HDO to ALJ's decision).

longer period as the ALJ may allow consistent with the public interest.[46]

23. We believe that the deadlines established herein for a decision by the Media Bureau or an ALJ on a program carriage complaint provide sufficient time for the adjudicator to reach a decision on the merits while also providing for the ''expedited review'' required by Congress and ensuring fairness to all parties.[47] We will allow the adjudicator to toll these deadlines only under certain circumstances. First, the adjudicator can toll a deadline if the parties jointly request tolling in order to pursue settlement discussions or ADR or for any other reason that the parties mutually agree justifies tolling.[48] Second, the adjudicator may toll a deadline if complying with the deadline would violate the due process rights of a party or would be inconsistent with fundamental fairness. Finally, in extraordinary situations, tolling a deadline may be necessary in light of the adjudicatory resources available at the time in the Office of Administrative Law Judges. The Commission has a number of alternatives under such circumstances to ensure expedited review, but a brief tolling of deadlines may be required in pending hearing cases. To the extent an ALJ decides to toll the deadline, we emphasize that this interlocutory decision will not be appealable to the Commission as a matter of right. Rather, pursuant to § 1.301(b) of the Commission's rules, an appeal to the Commission of an ALJ's decision to toll the deadline shall be filed only if allowed by the ALJ. To the extent the ALJ does not allow an appeal, or if no permission to file an appeal is requested, an objection to the ALJ's decision to toll the deadline may be raised on review of the ALJ's initial decision.

24. Taken together, the 80-calendar-day initial pleading cycle, the 60-calendar-day deadline for a *prima facie* determination, the 10-calendar-day ADR election period in cases referred to an ALJ, and the 60- or 150-calendar-day (in cases decided by the Media Bureau, depending on whether discovery is conducted) or 240-calendar-day (in cases decided by an ALJ) deadline for a ruling on the merits mean that program carriage complaints will be resolved within approximately seven or ten months (in cases decided by the Media Bureau, depending on whether discovery is conducted) or thirteen months (in cases decided by an ALJ) after a complaint is filed, assuming that the parties do not elect ADR or seek to toll the deadlines. While these timeframes are longer than our aspirational goals for resolving program access complaints,[49] we believe these time frames are necessary given the often fact-intensive nature of program carriage claims, which will often focus on the details of the negotiation process and similarities and differences in programming.[50]

D. Temporary Standstill of Existing Contract Pending Resolution of a Program Carriage Complaint

25. We establish specific procedures for the Media Bureau's consideration of requests for a temporary standstill of the price, terms, and other conditions of an existing programming contract by a program carriage complainant seeking renewal of such a contract. The procedures we adopt herein mirror the procedures adopted previously for temporary standstills involving program access complaints.[51] The record reflects that, absent a standstill, an MVPD will have the ability to retaliate against a programming vendor that files a legitimate complaint by ceasing carriage of the programming vendor's video programming, thereby harming the programming vendor as well as viewers who have come to expect to be able to view that video programming.[52] Moreover, absent a standstill, programming vendors may feel compelled to agree to the carriage demands of MVPDs, even if these demands violate the program carriage rules, in order to maintain carriage of video programming in which they have made substantial investments. While some MVPDs may offer month-to-month extensions after expiration of a carriage contract, programming vendors explain that such extensions may lead to uncertainty for viewers and programming vendors and impede the ability of programming vendors to attract financing.

26. The Supreme Court has affirmed the Commission's authority to impose interim injunctive relief, in the form of a standstill order, pursuant to section

[46] We note that the parties may commence discovery before the prehearing conference is held. *See* 47 CFR 1.311(c)(2).

[47] We note that the Commission in the *1993 Program Carriage Order* rejected a 90-day deadline for resolution of program carriage complaints. *See 1993 Program Carriage Order,* 9 FCC Rcd at 2655, para. 32 n.52. We continue to believe that a 90-day deadline is impractical, but the longer deadlines established herein are realistic given our experience with program carriage cases since 1993. We also note that the Commission previously declined to adopt revised deadlines for resolving program access complaints, stating that ''overly accelerated pleading and discovery time periods can lead to increased litigation costs if the parties are required to hire additional staff and counsel in attempting to meet unrealistic deadlines.'' *See Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements,* MB Docket No. 07–198, Report and Order, 22 FCC Rcd 17791, 17857, para. 108 (2007) (''*2007 Program Access Order*''). We find these concerns are not presented here because the deadlines we adopt for resolving program carriage complaints are not ''overly accelerated'' or unrealistic.

[48] For example, if the parties jointly request to toll the Media Bureau's 60-calendar-day deadline for reaching a *prima facie* determination to pursue settlement discussions or ADR, the Media Bureau will toll the deadline until the parties jointly inform the Media Bureau that efforts to resolve the dispute were unsuccessful. Similarly, if the parties jointly request to toll the deadline for reaching a decision on the merits, the adjudicator will toll the deadline until the parties jointly inform the adjudicator that efforts to resolve the dispute were unsuccessful.

[49] *See 2007 Program Access Order,* 22 FCC Rcd at 17857, para. 108 (retaining goal of resolving program access complaints within five months from the submission of a complaint for denial of programming cases, and nine months for all other program access complaints, such as price discrimination cases).

[50] *See* Comcast Comments at 31–33 (arguing that program carriage cases are more complex than program access cases).

[51] *See* 47 CFR 76.1003(l); *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements,* First Report and Order, 25 FCC Rcd 746, 794–797, paras. 71–75 (2010) (''*2010 Program Access Order*''), *vac'd in part, Cablevision Sys. Corp.* v. *FCC,* 2011 WL 2277217 (D.C. Cir. June 10, 2011). Comcast contends that the Commission ''should be wary'' of importing a standstill adopted for program access complaints into the program carriage context because, unlike the program access context where a network is under an obligation not to withhold the network from an MVPD, there is no duty to carry a network in the program carriage context. *See* Letter from David P. Murray, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07–42 (July 25, 2011), at 3 n.9 (''Comcast July 25 2011 *Ex Parte* Letter''). In fact, the Commission adopted a program access standstill requirement for both satellite-delivered and terrestrially delivered networks, despite the fact that a terrestrially delivered network is under no obligation to refrain from withholding the network from an MVPD in the absence of a Commission order. *See 2010 Program Access Order,* 25 FCC Rcd at 794, para. 71. We also note that there are important parallels between the program access and program carriage regimes, inasmuch as both are based on concerns with the impact of vertical integration on competition in the video distribution and video programming markets. Moreover, Comcast ignores the fact that the program carriage regime may also impose a duty on an MVPD to carry a programming vendor if the MVPD otherwise refuses to do so on the basis of affiliation or non-affiliation.

[52] *See* WealthTV Aug. 4 2008 *Ex Parte* Letter (attaching Letter from U.S. Sen. Amy Klobuchar to Kevin J. Martin, Chairman, FCC (July 24, 2008) at 1 (''Independent programming providers continue to express concern that continued uncertainties and delays create a chilling effect on their willingness to bring discrimination complaints, because of their fear of potential retaliation by MVPDs while a complaint remains pending.'')); HDNet Nov. 20 2007 *Ex Parte Letter* at 2 (''An MVPD could retaliate by allowing the clock to run and harmful uncertainty about the unaffiliated video programming provider to mount, or even by allowing the arrangement to expire and then removing the unaffiliated video programming provider from the platform.''); *see also* NAIN June 5 2008 *Ex Parte* Letter, Attachment at 1; Letter from David S. Turetsky, Counsel for HDNet LLC, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07–42 (June 4, 2008) at 2.

4(i).[53] The Commission recently relied on this authority in adopting standstill procedures for program access cases. Under section 4(i), the Commission is authorized to ''make such rules and regulations * * * as may be necessary in the execution of its functions,'' and to ''[m]ake such rules and regulations * * * not inconsistent with law, as may be necessary to carry out the provisions of this Act.'' [54] Accordingly, the Commission has statutory authority to impose a temporary standstill of an existing contract in appropriate cases pending resolution of a program carriage complaint. While a complainant could request, and the Commission or Media Bureau could issue, a standstill order in a program carriage complaint proceeding under the same standards described in this order without the new procedures adopted herein, we believe that codifying uniform procedures will help to expedite action on standstill requests and provide guidance to complainants and MVPDs.[55]

27. Pursuant to the rules we adopt herein, a program carriage complainant seeking renewal of an existing programming contract, under which programming is then being provided, may submit along with its complaint a petition for a temporary standstill of its programming contract pending resolution of the complaint.[56] We encourage complainants to file the petition and complaint sufficiently in advance of the expiration of the existing contract, and in no case later than 30 days prior to such expiration, to provide the Media Bureau with sufficient time to act prior to expiration. In its petition, the complainant must demonstrate how grant of the standstill will meet the following four criteria: (i) The complainant is likely to prevail on the merits of its complaint; (ii) the complainant will suffer irreparable harm absent a stay; (iii) grant of a stay will not substantially harm other interested parties; and (iv) the public interest favors grant of a stay.[57] As part of a showing of irreparable harm, a complainant may discuss, among other things, the impact on subscribers and the extent to which the programming vendor's advertising and license fee revenues and its ability to compete for advertisers and programming will be adversely affected absent a standstill.[58]

[53] *United States* v. *Southwestern Cable Co.,* 392 U.S. 157, 181 (1968); *see also AT&T Corp.* v. *Ameritech Corp.,* Memorandum Opinion and Order, 13 FCC Rcd 14508 (1998) (standstill order issued pursuant to 47 U.S.C. 154(i) temporarily preventing Ameritech from enrolling additional customers in, and marketing and promoting, a ''teaming'' arrangement with Qwest Corporation pending a decision concerning the lawfulness of the program); *Formal Complaints Order,* 12 FCC Rcd at 22566, para. 159 and n.464 (1997) (stating that the Commission has authority under section 4(i) of the Act to award injunctive relief); *Time Warner Cable,* Order on Reconsideration, 21 FCC Rcd 9016 (MB 2006) (standstill order issued pursuant to section 4(i) denying a stay and reconsideration of the Media Bureau's order requiring Time Warner temporarily to reinstate carriage of the NFL Network on systems that it recently acquired from Adelphia Communications and Comcast Corporation until the Commission could resolve on the merits the Emergency Petition for Declaratory Ruling filed by the NFL).

[54] 47 U.S.C. 154(i), 303(r). In contract to the retransmission consent context, there is no statutory provision with which the Commission-ordered standstill of a program carriage agreement would be inconsistent. *See* 47 U.S.C. 325(b)(1)(A) (''No cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except–(A) with the express authority of the originating station''); *Amendment of the Commission's rules Related to Retransmission Consent,* MB Docket No. 10–71, Notice of Proposed Rulemaking, 26 FCC Rcd 2718, 2727–29, paras. 18–19 (2011) (''*Retransmission Consent NPRM*'') (concluding that section 325(b) prevents the Commission from ordering interim carriage over the objection of the broadcaster, even upon a finding of a violation of the good faith negotiation requirement, and seeking comment on this conclusion).

[55] NCTA has suggested that section 624(f)(1) of the Communications Act, which generally prohibits any Federal agency, State, or franchising authority from imposing ''requirements regarding the provision or content of cable services, except as expressly provided in this title,'' precludes *all* temporary standstill orders in the context of a program carriage complaint proceeding. 47 U.S.C. 544(f)(1); *see* Letter from Rick Chessen, NCTA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07–42 (July 1, 2011) (''NCTA July 1 2011 *Ex Parte* Letter''); *see also* Comcast July 25 2011 *Ex Parte* Letter at 1–2. We disagree. Section 616(a) expressly directs the Commission to ''establish regulations governing program carriage agreements and related practices.'' 47 U.S.C. 536(a). Further, a temporary standstill order could be found necessary to prevent the likely occurrence of one of the practices expressly prohibited in section 616(a). See 47 U.S.C. 536(a)(1)–(3). Moreover, we note that section 624(f)(1) is directed at the ''provision or content of cable services'' and thus by its terms does not apply to other types of MVPD services, such as direct broadcast satellite service. 47 U.S.C. 544(f)(1). We need not, and do not, decide whether section 624(f)(1) would bar granting temporary injunctive relief in the program carriage context in *some* circumstances. Instead, we ask for comment on that issue in the accompanying *NPRM* in MB Docket No. 11–131.

We also reject Comcast's claim that the Commission cannot rely on section 4(i) as authority for granting a standstill because section 616(a)(5) of the Act and § 76.1302(g)(1) of the Commission's rules prevent the Commission from imposing remedies or penalties unless and until a violation of section 616 has been found after an adjudication on the merits. *See* Comcast July 25 2011 *Ex Parte* Letter at 1–2 (citing 47 U.S.C. 536(a)(5) (requiring the Commission to establish regulations ''provid[ing] for appropriate penalties and remedies for violations of this subsection, including carriage''); 47 CFR 76.1302(g)(1) (''Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies * * *.''); *AT&T Co.* v. *FCC,* 487 F.2d 865, 874–76 (2d Cir. 1973)). As an initial matter, as noted above, the Commission has longstanding authority to grant injunctive relief pursuant to section 4(i) and recently relied on that authority in adopting standstill procedures for program access cases. We do not believe that the provisions cited by Comcast preclude the Commission from imposing interim injunctive relief upon an appropriate showing. Indeed, the Commission relied on section 4(i) in adopting a standstill procedure for program access complaints despite language in the program access provisions of the Act and the Commission's rules similar to the language cited by Comcast. *See* 47 U.S.C. 548(e)(1) (''Upon completion of such adjudicatory proceeding, the Commission shall have the power to order appropriate remedies * * *.''); 47 CFR 76.1003(h)(1) (''Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies * * *.'').

[56] We note that program carriage claims involving existing contracts do not arise solely at renewal. The Media Bureau has previously found at the *prima facie* stage of review that a complainant may have a timely program carriage claim in the middle of a contract term if the basis for the claim is an allegedly discriminatory decision made by the MVPD that the contract left to the MVPD's discretion. *See Tennis Channel HDO,* 25 FCC Rcd at 14154–59, paras. 11–16; *see also NFL Enterprises HDO,* 23 FCC Rcd at 14819–20, paras. 69–70; *MASN II HDO,* 23 FCC Rcd at 14833–35, paras. 102–105. We will consider the availability of a standstill outside of the renewal context on a case-by-case basis.

[57] *See, e.g., Virginia Petroleum Jobbers Ass'n* v. *FPC,* 259 F.2d 921, 925 (D.C. Cir. 1958); *see also Washington Metropolitan Area Transit Comm'n* v. *Holiday Tours,* 559 F.2d 841 (D.C. Cir. 1977) (clarifying the standard set forth in *Virginia Petroleum Jobbers Ass'n* v. *FPC*); *Hispanic Information and Telecomm. Network, Inc.,* 20 FCC Rcd 5471, 5480, para. 26 (2005) (affirming Bureau's denial of request for stay on grounds applicant failed to establish four criteria demonstrating stay is warranted). We reject Comcast's claim that the first criterion requires a showing of a ''substantial'' likelihood of success on the merits. *See* Comcast July 25 2011 *Ex Parte* Letter at 3. The factors set forth above are consistent with Supreme Court precedent (*Winter* v. *Natural Resources Defense Council, Inc.,* 555 U.S. 7 (2008)) and a recent D.C. Circuit case applying *Winter. See Winter,* 505 U.S. at 20 (''A plaintiff seeking a preliminary injunction must establish that he is *likely to succeed* on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.'') (emphasis added; citations omitted); *Sherley* v. *Sebelius,* 2011 WL 1599685, *4 (D.C. Cir. Apr. 29, 2011) (quoting and applying the *Winter* test). We also reject Comcast's claim that a program carriage standstill is a ''mandatory injunction'' subject to a heightened standard because it will not preserve the *status quo* but will instead extend the term of a contract set to expire on an agreed-upon date and form a new, government-mandated contract. *See* Comcast July 25 2011 *Ex Parte* Letter at 2. As discussed above, we require a complainant to file a standstill request at least 30 days prior to the expiration of a contract to allow the Media Bureau with sufficient time to act prior to expiration. Accordingly, despite Comcast's claims, a program carriage standstill, if granted, will preserve the *status quo* by requiring continued carriage of a network that is being carried at the time the standstill is granted.

[58] Comcast claims that a complainant is unlikely to meet the requirements for a standstill because (i) Under the first factor, it is unlikely that the facts will be developed at the standstill stage to demonstrate a likelihood of success on the merits, at least with respect to program carriage complaints alleging discrimination based on circumstantial evidence; (ii) under the second factor, irreparable harm cannot be established when there is an adequate remedy at law, which Comcast claims exists through a mandatory carriage remedy after a finding of a program carriage violation; and (iii)

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In order to ensure an expedited decision, the defendant will have ten calendar days after service to file an answer to the petition for a standstill order. In acting on the petition, the Media Bureau may limit the length of the standstill to a defined period or may specify that the standstill will continue until the adjudicator resolves the underlying program carriage complaint. The adjudicator may lift the temporary standstill to the extent that it finds that the stay is having a negative effect on settlement negotiations or is otherwise no longer in the public interest.

28. If the Media Bureau grants the temporary standstill, the adjudicator ruling on the merits of the complaint (*i.e.,* either the Media Bureau or an ALJ) will apply the terms of the new agreement between the parties, if any, as of the expiration date of the previous agreement. For example, if carriage of the video programming has continued uninterrupted during resolution of the complaint, and if the decision on the merits requires the defendant MVPD to pay a higher amount to the programming vendor than was required under the terms of the expired contract, the defendant MVPD will make an additional payment to the programming vendor in an amount representing the difference between the amount that is required to be paid pursuant to the decision and the amount the defendant MVPD paid under the terms of the expired contract pending resolution of the complaint. Conversely, if carriage of the video programming has continued uninterrupted during resolution of the complaint, and if the decision on the merits requires the defendant MVPD to pay a lesser amount to the programming vendor than was required under the terms of the expired contract, the programming vendor will credit the defendant MVPD with an amount representing the difference between the amount actually paid under the terms of the expired contract during resolution of the complaint and the amount that is required to be paid pursuant to the decision.

29. We note that program carriage complaints do not entail solely price disputes. Rather, complaints may entail the issue of whether the MVPD should be required to carry a programming vendor's video programming at all or whether the MVPD should carry the video programming on a specific tier. In these cases, it may be difficult to apply the new terms to the standstill period, especially in cases where the adjudicator does not ultimately order carriage. Despite these complications, we believe that the adjudicator can address these issues on a case-by-case basis. To facilitate expeditious resolution of these issues, we propose in the *NPRM* in MB Docket No. 11–131 specific procedures to assist an adjudicator to reach a fair and just result.

30. As explained in the *2010 Program Access Order,* we expect parties to deal and negotiate with one another in good faith to come to settlement while the program carriage complaint is pending at the Commission. We also note that the standstill requirement imposed in connection with previous merger conditions is automatic upon notice of the MVPD's intent to arbitrate, whereas the process we adopt here requires a complainant to seek Commission approval based on the four-criteria test described above.[59] Thus, the Commission will be able to take into account all relevant facts in each case. Moreover, because the new carriage terms will be applied as of the expiration date of the previous contract, we believe that complainants will not have an incentive to seek a temporary standstill solely to benefit from the *status quo* or to gain leverage.[60]

E. Constitutional Issues

31. Our efforts in this *Second Report and Order* to create an improved program carriage complaint regime are consistent with constitutional requirements. TWC argues that the constitutionality of the program carriage rules has never been tested under the First and Fifth Amendments. TWC argues that, to the extent the goal of the program carriage rules is to promote diversity of speech, the rules are content-based and thus subject to strict scrutiny, which requires a ''compelling'' government interest and ''narrow tailoring.'' Diversity, however, is not the sole or even primary goal of the program carriage provision. Rather, through the program carriage provision, Congress also specifically intended to promote competition in both the video programming market and the video distribution market. Indeed, the program carriage discrimination provision specifically requires the Commission to assess on a case-by-case basis whether conduct amounting to discrimination on the basis of affiliation has the effect of ''unreasonably restrain[ing] the ability of an unaffiliated video programming vendor to compete fairly.'' By favoring its affiliated programming vendor on the basis of affiliation, an MVPD can hinder the ability of an unaffiliated programming vendor to compete in the video programming market, thereby allowing the affiliated programming vendor to charge higher license fees and reducing competition in the markets for the acquisition of advertising and programming rights.

32. The D.C. Circuit has already decided that the leased access provision of the 1992 Cable Act is not content-based. The court held that the leased access provision does not favor or disfavor speech on the basis of the ideas

under the third factor, forced carriage would result in substantial harm to MVPDs by violating their First Amendment rights. *See* Comcast July 25 2011 *Ex Parte* Letter at 4–5. The Media Bureau will have the opportunity to consider these arguments when assessing the facts and circumstances presented in a standstill request on a case-by-case basis. We find no basis to deny complainants the opportunity to pursue a standstill in the program carriage context simply because of the potential difficulty in satisfying the requirements for a standstill. In this regard, we note that ''injunctive relief [is] an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.'' *Winter,* 505 U.S. at 21 (citation omitted); *see also 2010 Program Access Order,* 25 FCC Rcd at 795, para. 73 n.266 (''when a party seeks injunctive relief (which is precisely what a standstill is), the law is clear that this is a request for 'extraordinary relief,' and courts therefore require such party to demonstrate, on a case-by-case basis with a sufficient evidentiary record, that it satisfies' the criteria set forth in *Virginia Petroleum Jobbers Ass'n*)'') (quoting with approval Time Warner Comments at 14 n.42); *Sky Angel,* 25 FCC Rcd 3879, 3884, para. 10 (MB 2010) (''we are unable to conclude that Sky Angel has met its burden of demonstrating that the extraordinary relief of a standstill order is warranted'').

[59] *See supra* para. 27; *see also* Time Warner Cable June 1 2011 *Ex Parte* Letter at 2 (''An MVPD should remain free to exercise its contractual rights to drop or reposition a programmer who has filed a program carriage complaint unless the Commission determines that the traditional factors for granting a stay are satisfied.'').

[60] Comcast claims that the possibility of a program carriage standstill presents practical and policy problems, such as affecting existing business negotiations; making it riskier for MVPDs to agree to carry new or less popular networks given the potential for a standstill request to be filed at the end of the carriage term; and making it more likely that parties will fail to reach agreement by allowing only programming vendors to request a standstill. *See* Comcast July 25 2011 *Ex Parte* Letter at 5–7. In making these claims, Comcast ignores the fact that a complainant could request, and the Commission or Media Bureau could issue, a standstill order in a program carriage complaint proceeding today under the same procedures adopted herein. Thus, all of the alleged practical and policy problems raised by Comcast exist today and are not created by these procedural rules. Moreover, the procedural rules we adopt herein will help to mitigate these alleged practical and policy problems. By setting forth the standard that will be applied to a program carriage standstill request and establishing specific deadlines for submitting and responding to such a request, we provide certainty to both complainants and MVPDs with respect to the standstill process. While Comcast claims that requiring a complainant to file a standstill request no later than 30 days prior to the expiration of a contract will chill business negotiations by placing parties in litigation before a contract ends (*see id.* at 6), the fact is that, without the procedures we adopt herein, a program carriage standstill request could be filed at any time, thereby creating greater uncertainty for MVPDs.

contained therein; rather, it regulates speech based on affiliation with a cable operator. The same conclusion applies to the program carriage provision of the 1992 Cable Act, which prevents MVPDs from demanding exclusivity or financial interests from, or discriminating on the basis of affiliation with respect to, unaffiliated programming vendors and, accordingly, regulates speech based on affiliation with an MVPD, not based on its content. The court held in *Time Warner* that the provisions of the 1992 Cable Act that regulate speech based on affiliation are subject to intermediate scrutiny and are constitutional if the government's interest is important or substantial and the means chosen to promote that interest do not burden substantially more speech than necessary to achieve the aim. The *Time Warner* court found that there are substantial government interests in promoting diversity and competition in the video programming market.[61] The program carriage rules, like the leased access requirements, promote diversity in video programming by promoting fair treatment of unaffiliated programming vendors and providing these vendors with an avenue to seek redress of anticompetitive carriage practices of MVPDs. Moreover, because MVPDs have an incentive to shield their affiliated programming vendors from competition with unaffiliated programming vendors for viewers, advertisers, and programming rights, the program carriage rules promote competition in the video programming market by promoting fair treatment of unaffiliated programming vendors. Thus, like the leased access rules, the program carriage rules would be subject to, and would withstand, intermediate scrutiny.

33. TWC argues that whatever justification existed for the program carriage provisions at the time they were adopted no longer exists today. Despite TWC's claim to the contrary, we find that the substantial government interests in promoting diversity and competition remain. TWC notes that the number of all national programming networks has grown since 1992;[62] the percentage of these networks affiliated with cable operators has decreased;[63] channel capacity has increased, thereby providing more room for unaffiliated programming vendors, and cable operators face more competition in the distribution market today than in 1992.[64] In the program carriage discrimination provision, however, Congress directed the Commission to assess on a case-by-case basis the impact of anticompetitive conduct on an unaffiliated programming vendor's ability to compete. These nationwide figures do not undermine Congress's finding that cable operators and other MVPDs have the incentive and ability to favor their affiliated programming vendors in individual cases, with the potential to unreasonably restrain the ability of an unaffiliated programming vendor to compete fairly. While the D.C. Circuit in vacating the Commission's horizontal ownership cap stated that ''[c]able operators * * * no longer have the bottleneck power over programming that concerned the Congress in 1992,'' the court in that case was reviewing a broad prophylactic rule that would limit individual cable operators to a maximum percentage of subscribers nationwide. Unlike the rule at issue in that case, the program carriage statute requires an assessment of the facts of each case and the impact on the ability of an unaffiliated programming vendor to compete fairly. In addition, we note that the number of cable-affiliated networks recently increased significantly after the merger of Comcast and NBC Universal, thereby highlighting the continued need for an effective program carriage complaint regime. The Commission noted that that transaction would ''result in an entity with increased ability and incentive to harm competition in video programming by engaging in foreclosure strategies or other discriminatory actions against unaffiliated video programming networks.'' [65] The Commission specifically relied upon the program carriage complaint process to address these concerns.

34. Moreover, the program carriage rules are no broader than necessary because the Commission will find a violation of the rules only after conducting a proceeding in which the complaining unaffiliated programming vendor or MVPD proves that an MVPD has demanded exclusivity from a programming vendor, has demanded a financial interest in a programming vendor, or has discriminated against the programming vendor on the basis of affiliation and that such discrimination has unreasonably restrained the programming vendor's ability to compete fairly. Thus, the program carriage rules burden no more speech than necessary to vindicate the government's goal of protecting competition and diversity.

35. We also reject TWC's claim that the program carriage rules infringe cable operators' rights under the Takings Clause of the Fifth Amendment. Quoting *Dolan* v. *City of Tigard,* 512 U.S. 374, 386 (1994), TWC argues that, ''[g]iven the existence of a fiercely competitive landscape fostering the development of diverse programming sources, there is no 'essential nexus' or 'rough proportionality' that would justify the taking that occurs under the * * * program carriage rules.'' TWC's reliance on *Dolan* is misplaced, as the ''essential nexus'' test concerns land use regulations that allegedly impose ''unconstitutional conditions'' and is inapplicable here.[66] None of the factors that the Supreme Court has identified as particularly significant in evaluating regulatory takings claims supports TWC's claim.[67] First, the program

[61] *See id.* (stating that after *Turner,* ''promoting the widespread dissemination of information from a multiplicity of sources'' and ''promoting fair competition in the market for television programming'' must be treated as important governmental objectives unrelated to the suppression of speech (quoting *Turner Broad. Sys., Inc.* v. *FCC,* 512 U.S. 622 (1994))).

[62] *See* TWC Comments at 8; Comcast Reply at 5; *compare* H.R. Rep. No. 102–628, at 41 (1992) (68 nationally delivered cable networks) *with Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Thirteenth Annual Report, 24 FCC Rcd 542, 550–51, para. 24 (2009) (''*13th Annual Report*'') (based on data from 2006, finding that there are 565 nationally delivered cable networks).

[63] *See* TWC Comments at 8; Comcast Reply at 5; *compare* H.R. Rep. No. 102–628, at 41 (1992) (stating that 57 percent of nationally delivered cable networks are affiliated with cable operators) *with 13th Annual Report,* 24 FCC Rcd at 550–51, para. 24 (based on data from 2006, finding that 14.9 percent of nationally delivered cable networks are affiliated with cable operators).

[64] *See id.* at ii and 9–10 (stating that competition in the distribution market requires a cable operator to make programming decisions ''based on business and editorial judgments as to whether particular channels meet the needs and interests of the operator's subscribers and to attempt to maximize consumer value by making the best deal possible in arm's length negotiations''); *see also* Comcast Reply at 5, 28 n.100, 30.

[65] *See id.* at 4284–85, para. 116; *see also id.* at 4282, para. 110 (''We agree that the vertical integration of Comcast's distribution network with NBCU's programming assets will increase the ability and incentive for Comcast to discriminate against or foreclose unaffiliated programming.'').

[66] *See Dolan,* 512 U.S. at 385–86; *see also id.* at 390 (Fifth Amendment requirement of ''rough proportionality'' applies where government requires a landowner to dedicate private land for some future public use in exchange for a discretionary benefit such as a building permit).

[67] *See Connolly* v. *Pension Ben. Guaranty Corp.,* 475 U.S. 211, 224–25 (1986) (''In all of these cases, we have eschewed development of any set formula for identifying a 'taking' forbidden by the Fifth Amendment, and have relied instead on ad hoc, factual inquiries into the circumstances of each particular case. To aid in this determination, however, we have identified three factors which have particular significance: (1) The economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action.'') (citations and internal quotes omitted), quoted in *Exclusive*

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carriage rules merely prohibit a cable operator from requiring a financial interest in a video programming vendor as a condition for carriage, from coercing a video programming vendor to provide exclusivity as a condition of carriage, or from discriminating on the basis of affiliation that unreasonably restrains the ability of unaffiliated video programming vendors to compete fairly. The program carriage provision of the Act, as well as our rules implementing that provision, do not compel a cable operator to carry certain programming, nor do they specify the rates for carriage. Second, the rules, which have been in force since 1993 and were required by Congress in 1992, do not interfere with any current investment-backed expectations. Third, the rules substantially advance the legitimate governmental interest in promoting competition and diversity in the video programming market, an interest that Congress has directed the Commission to vindicate and that the courts have recognized as important. Finally, our examination of the record in this proceeding refutes the premise of TWC's argument that the program carriage rules serve no purpose in light of the current state of competition in the video programming market. Thus, the rules do not effect a ''taking'' within the meaning of the Fifth Amendment.

F. Adequate Notice

36. We reject arguments that the *Program Carriage NPRM* failed to provide the specificity required under the Administrative Procedure Act (''APA'') and that the Commission must issue another notice before adopting final rules. Sections 553(b) and (c) of the APA require agencies to give public notice of a proposed rule making that includes ''either the terms or substance of the proposed rule or a description of the subjects and issues involved'' and to give interested parties an opportunity to submit comments on the proposal. Such notice is not, however, required for rules involving agency procedure. The standstill procedures and the revised procedural rules adopted herein, including extending the deadline for a defendant to file an answer to a complaint, are rules of agency procedure for which no notice is required under the APA.[68] When notice is required under the APA, the notice ''need not specify every precise proposal which [the agency] may ultimately adopt as a rule''; it need only ''be sufficient to fairly apprise interested parties of the issues involved.'' In particular, the APA's notice requirements are satisfied where the final rule is a ''logical outgrowth'' of the actions proposed. Here, the *Program Carriage NPRM* specifically sought comment on, among other questions, ''whether the elements of a *prima facie* case should be clarified,'' ''whether specific time limits on the Commission, cable operators, or others would promote a speedy and just resolution'' of program carriage disputes, and ''whether the Commission should adopt rules to address the complaint process itself.'' But in any event, with respect to the standstill procedures, the Commission specifically sought comment on whether to ''adopt additional rules to protect programmers from potential retaliation if they file a complaint.'' As discussed above, the standstill procedure will help to prevent retaliation while a program carriage complaint is pending, and thus is a ''logical outgrowth'' of this proposal.[69]

IV. Procedural Matters

G. Congressional Review Act

37. The Commission will send a copy of this *Second Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

H. Final Regulatory Flexibility Analysis

Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''),[70] an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Notice of Proposed Rulemaking* in MB Docket No. 07–42 (hereinafter referred to as the *Program Carriage NPRM*).[71] The Commission sought written public comment on the proposals in the *Program Carriage NPRM,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.[72]

A. Need for, and Objectives of, the Proposed Rule Changes

2. In 1993, the Commission adopted rules implementing a provision of the 1992 Cable Act[73] pertaining to carriage of video programming vendors by multichannel video programming distributors (''MVPDs'') intended to benefit consumers by promoting competition and diversity in the video programming and video distribution markets (the ''program carriage'' rules).[74] As required by Congress, these

Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235, 20262, para. 56 (2007) (''*MDU Exclusives Order*''), *aff'd sub nom. Nat'l Cable & Telecomm. Ass'n* v. *FCC,* 567 F.3d 659 (D.C. Cir. 2009).

[68] While Comcast claims that the procedures we adopt herein for a program carriage standstill will have ''substantive effects,'' the fact is that these procedures codify the process for requesting a standstill that a complainant could request, and the Commission or Media Bureau could issue, today without the new procedures adopted herein. *See* Comcast July 25 2011 *Ex Parte* Letter at 7; *supra* n.60. Any ''substantive effects'' resulting from the filing and consideration of a program carriage standstill request exist today and are not affected by the procedures we adopt herein. *See JEM Broad. Co.* v. *FCC,* 22 F.3d 320, 326 (D.C. Cir. 1994) (Commission's ''hard look'' rules were procedural because they ''did not change the substantive standards by which the Commission evaluates license applications''); *Bachow Commc'ns, Inc.* v. *FCC,* 237 F.3d 683 (D.C. Cir. 2001) (Commission cut-off date for certain amendments to pending applications was procedural); *Neighborhood TV Co.* v. *FCC,* 742 F.2d 629 (D.C. Cir. 1984) (Commission interim processing rules were procedural); *Kessler* v. *FCC,* 326 F.2d 673 (1963) (same); *Ranger* v. *FCC,* 294 F.2d 240, 243–44 (D.C. Cir. 1961) (Commission cut-off date for filing applications was procedural). The procedures we adopt herein do not alter the existence or scope of any substantive rights, but simply codify a pre-existing procedure for obtaining equitable relief to vindicate those rights. Any alleged burden stemming from a procedural rule is not sufficient to convert the rule into a substantive one that requires notice and comment. *See, e.g., James V. Hurson Assocs, Inc.* v. *Glickman,* 229 F.3d 277, 281 (D.C. Cir. 2000) (''even if the [agency's] elimination of [the procedural rule] did impose a substantial burden * * *, that burden would not convert the rule into a substantive one that triggers the APA's notice-and-comment requirement * * *. [A]n otherwise-procedural rule does not become a substantive one, for notice-and-comment purposes, simply because it imposes a burden on regulated parties.'').

[69] *See supra* para. 25. The fact that the Commission may have been more explicit in seeking comment on a standstill process in other contexts does not undermine the fact that the program carriage standstill procedures are rules of agency procedure for which no notice is required under the APA and, in any event, are a logical outgrowth of the request for comment on rules to protect programmers from retaliation. *See* Comcast July 25 2011 *Ex Parte* Letter at 7 (citing *Retransmission Consent NPRM,* 26 FCC Rcd at 2727–29, paras. 18–19 and *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements,* Notice of Proposed Rulemaking, 22 FCC Rcd 17791, 17868–70, paras. 136–138 (2007)).

[70] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[71] *See Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage,* MB Docket No. 07–42, Notice of Proposed Rule Making, 22 FCC Rcd 11222, 11231–40, Appendix (2007) (''*Program Carriage NPRM*'').

[72] *See* 5 U.S.C. 604.

[73] *See* Cable Television Consumer Protection and Competition Act of 1992, Public Law 102–385, 106 Stat. 1460 (1992) (''1992 Cable Act''); *see also* 47 U.S.C. 536.

[74] *See Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage,* MM Docket No. 92–265,

rules allow for the filing of complaints with the Commission alleging that an MVPD has (i) Required a financial interest in a video programming vendor's program service as a condition for carriage (the ''financial interest'' provision); (ii) coerced a video programming vendor to provide, or retaliated against a vendor for failing to provide, exclusive rights as a condition of carriage (the ''exclusivity'' provision); or (iii) unreasonably restrained the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage (the ''discrimination'' provision). Congress specifically directed the Commission to provide for ''expedited review'' of these complaints and to provide for appropriate penalties and remedies for any violations. Programming vendors have complained that the Commission's procedures for addressing program carriage complaints have hindered the filing of legitimate complaints and have failed to provide for the expedited review envisioned by Congress. In the *Second Report and Order* in MB Docket No. 07–42, the Commission takes the following initial steps to improve its procedures for addressing program carriage complaints.

3. First, in response to concerns that programming vendors are uncertain as to what evidence must be provided in a complaint to establish a *prima facie* case of a program carriage violation, the Commission codifies in its rules the evidence required to establish a *prima facie* case.[75] A *prima facie* finding means that the complainant has provided sufficient evidence in its complaint, without the Media Bureau having considered any evidence to the contrary, to proceed to a ruling on the merits. The *Second Report and Order* in MB Docket No. 07–42 explains that, in complaints alleging a violation of the exclusivity or financial interest provisions, the complaint must contain direct evidence (either documentary or testimonial) supporting the facts underlying the claim. For complaints alleging a violation of the discrimination provision, however, direct evidence supporting a claim that the defendant MVPD discriminated ''on the basis of affiliation or non-affiliation'' is sufficient to establish this element of a *prima facie* case but is not required. Because it is unlikely that direct evidence of a discriminatory motive will be available to potential complainants, the *Second Report and Order* in MB Docket No. 07–42 clarifies that a complainant can establish this element of a *prima facie* case of a violation of the program carriage discrimination provision by providing the following circumstantial evidence of discrimination ''on the basis of affiliation or non-affiliation'': (i) The complainant programming vendor must provide evidence that it provides video programming that is similarly situated to video programming provided by a programming vendor affiliated with the defendant MVPD, based on a combination of factors, such as genre, ratings, license fee, target audience, target advertisers, target programming, and other factors; and (ii) the complaint must contain evidence that the defendant MVPD has treated the video programming provided by the complainant programming vendor differently than the similarly situated video programming provided by the programming vendor affiliated with the defendant MVPD with respect to the selection, terms, or conditions for carriage. In addition, regardless of whether the complainant relies on direct or circumstantial evidence of discrimination ''on the basis of affiliation or non-affiliation,'' the complaint must also contain evidence that the defendant MVPD's conduct has the effect of unreasonably restraining the ability of the complainant programming vendor to compete fairly.

4. Second, having established specific evidentiary requirements for what the complainant must provide in its complaint to establish a *prima facie* case of a program carriage violation, the *Second Report and Order* provides the defendant with additional time to answer the complaint in order to develop a full, case-specific response, with supporting evidence, to the evidence put forth by the complainant. Specifically, while the Commission's current rule provides that an MVPD served with a program carriage complaint shall answer the complaint within 30 days of service, the *Second Report and Order* amends this rule to provide an MVPD with 60 days to answer the complaint.

5. Third, in response to concerns that the unpredictable and sometimes lengthy time frames for Commission action on program carriage complaints have discouraged programming vendors from filing legitimate complaints, the Commission establishes deadlines for action by the Media Bureau and Administrative Law Judges (''ALJ'') when acting on program carriage complaints. Action on program carriage complaints entails a two-step process: the initial *prima facie* determination by the Media Bureau, followed (if necessary) by a decision on the merits by an adjudicator (*i.e.,* either the Media Bureau or an ALJ). For the first step, the Commission in the *Second Report and Order* in MB Docket No. 07–42 directs the Media Bureau to release a decision determining whether the complainant has established a *prima facie* case within 60 calendar days after the complainant's reply to the defendant's answer is filed (or the date on which the reply would be due if none is filed). For the second step, the Commission imposes different deadlines for a ruling on the merits of the complaint depending upon whether the adjudicator is the Media Bureau or the ALJ. After the Media Bureau concludes that the complaint contains sufficient evidence to establish a *prima facie* case, the Media Bureau has three options for addressing the merits of the complaint: (i) The Media Bureau can rule on the merits of the complaint based on the pleadings without discovery; (ii) if the Media Bureau determines that the record is not sufficient to resolve the complaint, the Media Bureau may outline procedures for discovery before proceeding to rule on the merits of the complaint; or (iii) if the Media Bureau determines that disposition of the complaint or discrete issues raised in the complaint requires resolution of factual disputes or other extensive discovery in an adjudicatory proceeding, the Media Bureau will refer the proceeding or discrete issues arising in the proceeding for an adjudicatory hearing before an ALJ. The Commission in the *Second Report and Order* in MB Docket No. 07–42 establishes the following deadlines for the adjudicator's decision on the merits. For complaints that the Media Bureau decides on the merits based on the pleadings without discovery, the Media Bureau must release a decision within 60 calendar days after its *prima facie* determination. For complaints that the Media Bureau decides on the merits after discovery, the Media Bureau must release a decision within 150 calendar days after its *prima facie* determination. For complaints referred to an ALJ for a decision on the merits, the ALJ must release an initial decision within 240

Second Report and Order, 9 FCC Rcd 2642 (1993) (''*1993 Program Carriage Order*''); *see also Implementation of the Cable Television Consumer Protection And Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage,* MM Docket No. 92–265, Memorandum Opinion and Order, 9 FCC Rcd 4415 (1994) (''*1994 Program Carriage Order*''). The Commission's program carriage rules are set forth at 47 CFR 76.1300—76.1302.

[75] *See Second Report and Order* in MB Docket No. 07–42 at paras. 9–17.

calendar days after one of the parties informs the Chief ALJ that it elects not to pursue Alternative Dispute Resolution (''ADR'') or, if the parties have mutually elected to pursue ADR, within 240 calendar days after the parties inform the Chief ALJ that they have failed to resolve their dispute through ADR. In adopting this deadline for program carriage complaints referred to an ALJ, the *Second Report and Order* in MB Docket No. 07–42 also adopts revised procedural deadlines applicable to adjudicatory hearings involving program carriage complaints. The deadlines for the Media Bureau or an ALJ to reach a decision may be tolled only under the following circumstances: (i) If the parties jointly request tolling in order to pursue settlement discussions or ADR or for any other reason that the parties mutually agree justifies tolling; or (ii) if complying with the deadline would violate the due process rights of a party or would be inconsistent with fundamental fairness. In addition, in extraordinary situations, the ALJ may toll the deadline for reaching a decision due to a lack of adjudicatory resources available at the time in the Office of Administrative Law Judges.

6. Fourth, in response to concerns that MVPDs have the ability to retaliate against a programming vendor that files a program carriage complaint by ceasing carriage of the programming vendor's video programming, the Commission in the *Second Report and Order* in MB Docket No. 07–42 establishes procedures for the Media Bureau's consideration of requests for a temporary standstill of the price, terms, and other conditions of an existing programming contract by a program carriage complainant seeking renewal of such a contract. Pursuant to these procedures, a program carriage complainant seeking renewal of an existing programming contract may submit along with its complaint a petition for a temporary standstill of its programming contract pending resolution of the complaint. The Commission encourages complainants to file the petition and complaint sufficiently in advance of the expiration of the existing contract, and in no case later than 30 days prior to such expiration, to provide the Media Bureau with sufficient time to act prior to expiration. In its petition, the complainant must demonstrate how grant of the standstill will meet the following four criteria: (i) The complainant is likely to prevail on the merits of its complaint; (ii) the complainant will suffer irreparable harm absent a stay; (iii) grant of a stay will not substantially harm other interested parties; and (iv) the public interest favors grant of a stay. The defendant will have ten calendar days after service to file an answer to the petition for a standstill order. If the Media Bureau grants the temporary standstill, the adjudicator ruling on the merits of the complaint (*i.e.,* either the Media Bureau or an ALJ) will apply the terms of the new agreement between the parties, if any, as of the expiration date of the previous agreement.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

7. There were no comments filed specifically in response to the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[76] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [77] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[78] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[79] Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

9. *Wired Telecommunications Carriers.* The 2007 North American Industry Classification System (''NAICS'') defines ''Wired Telecommunications Carriers'' as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' [80] The SBA has developed a small business size standard for wireline firms within the broad economic census category, ''Wired Telecommunications Carriers.'' [81] Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[82] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these firms can be considered small.[83]

10. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined above. The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees.[84] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard,

[76] 5 U.S.C. 603(b)(3).

[77] 5 U.S.C. 601(6).

[78] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[79] 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

[80] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers''; *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[81] 13 CFR 121.201, 2007 NAICS code 517110.

[82] *See id.*

[83] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[84] 13 CFR 121.201, 2007 NAICS code 517110.

the majority of these firms can be considered small.[85]

11. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide.[86] Industry data indicate that all but ten cable operators nationwide are small under this size standard.[87] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[88] Industry data indicate that, of 6,101 systems nationwide, 4,410 systems have under 10,000 subscribers, and an additional 258 systems have 10,000–19,999 subscribers.[89] Thus, under this standard, most cable systems are small.

12. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [90] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[91] Industry data indicate that all but nine cable operators nationwide are small under this subscriber size standard.[92] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[93] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

13. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' [94] which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[95] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these firms can be considered small.[96] Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and EchoStar Communications Corporation (''EchoStar'') (marketed as the DISH Network).[97] Each currently offers subscription services. DIRECTV [98] and EchoStar [99] each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

14. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' [100] which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[101] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.[102]

15. *Home Satellite Dish (''HSD'') Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers.[103] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.[104] Census Bureau data for

[85] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[86] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[87] *See* Broadcasting & Cable Yearbook 2010 at C–2 (2009) (data current as of Dec. 2008).

[88] 47 CFR 76.901(c).

[89] *See* Television & Cable Factbook 2009 at F–2 (2009) (data current as of Oct. 2008). The data do not include 957 systems for which classifying data were not available.

[90] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[91] 47 CFR 76.901(f); *see FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

[92] *See* Broadcasting & Cable Yearbook 2010 at C–2 (2009) (data current as of Dec. 2008).

[93] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to 76.901(f) of the Commission's rules. *See* 47 CFR 76.901(f).

[94] *See* 13 CFR 121.201, 2007 NAICS code 517110. The 2007 NAICS definition of the category of ''Wired Telecommunications Carriers'' is in paragraph 8, above.

[95] 13 CFR 121.201, 2007 NAICS code 517110.

[96] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[97] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Thirteenth Annual Report, 24 FCC Rcd 542, 580, para. 74 (2009) (''*13th Annual Report*''). We note that, in 2007, EchoStar purchased the licenses of Dominion Video Satellite, Inc. (''Dominion'') (marketed as Sky Angel). *See* Public Notice, ''Policy Branch Information; Actions Taken,'' Report No. SAT–00474, 22 FCC Rcd 17776 (IB 2007).

[98] As of June 2006, DIRECTV is the largest DBS operator and the second largest MVPD, serving an estimated 16.20% of MVPD subscribers nationwide. *See 13th Annual Report,* 24 FCC Rcd at 687, Table B–3.

[99] As of June 2006, DISH Network is the second largest DBS operator and the third largest MVPD, serving an estimated 13.01% of MVPD subscribers nationwide. *Id.*

[100] 13 CFR 121.201, 2007 NAICS code 517110.

[101] *See id.*

[102] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[103] 13 CFR 121.201, 2007 NAICS code 517110.

[104] *See id.*

2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.[105]

16. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).[106] In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years.[107] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.[108] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.[109] The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.[110] Auction 86 concluded in 2009 with the sale of 61 licenses.[111] Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

17. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[112] Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' [113] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.[114] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.[115]

18. *Fixed Microwave Services.* Microwave services include common carrier,[116] private-operational fixed,[117] and broadcast auxiliary radio services.[118] They also include the Local Multipoint Distribution Service (LMDS),[119] the Digital Electronic Message Service (DEMS),[120] and the 24 GHz Service,[121] where licensees can choose between common carrier and non-common carrier status.[122] At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons.[123]

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[105] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[106] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* MM Docket No. 94–131, PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

[107] 47 CFR 21.961(b)(1).

[108] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1500 or fewer employees.

[109] *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86,* Public Notice, 24 FCC Rcd 8277 (2009).

[110] *Id.* at 8296.

[111] *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period,* Public Notice, 24 FCC Rcd 13572 (2009).

[112] The term ''small entity'' within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on EBS licensees.

[113] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers,'' (partial definition), *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[114] 13 CFR 121.201, 2007 NAICS code 517110.

[115] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[116] *See* 47 CFR part 101, Subparts C and I.

[117] *See* 47 CFR part 101, Subparts C and H.

[118] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. *See* 47 CFR part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[119] *See* 47 CFR part 101, subpart L.

[120] *See* 47 CFR part 101, subpart G.

[121] *See id.*

[122] *See* 47 CFR 101.533, 101.1017.

[123] 13 CFR 121.201, 2007 NAICS code 517210.

Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[124] For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.[125] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

19. *Open Video Systems.* The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.[126] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[127] OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' [128] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.[129] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.[130] In addition, we note that the Commission has certified some OVS operators, with some now providing service.[131] Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises.[132] The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities.

20. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis * * *. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.'' [133] The SBA has developed a small business size standard for this category, which is: all such firms having $15 million dollars or less in annual revenues.[134] To gauge small business prevalence in the Cable and Other Subscription Programming industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 396 firms in this category that operated for the entire year.[135] Of that number, 325 operated with annual revenues of $9,999,999 or less.[136] Seventy-one (71) operated with annual revenues of between $10 million and $100 million or more.[137] Thus, under this category and associated small business size standard, the majority of firms can be considered small.

21. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [138] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope.[139] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

22. *Incumbent Local Exchange Carriers (''LECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[140] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.[141]

23. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or

[124] *See id.* The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[125] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.*

[126] 47 U.S.C. 571(a)(3)–(4). *See 13th Annual Report,* 24 FCC Rcd at 606, para. 135.

[127] *See* 47 U.S.C. 573.

[128] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers''; *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[129] 13 CFR 121.201, 2007 NAICS code 517110.

[130] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[131] A list of OVS certifications may be found at *http://www.fcc.gov/mb/ovs/csovscer.html.*

[132] *See 13th Annual Report,* 24 FCC Rcd at 606–07, para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

[133] U.S. Census Bureau, 2007 NAICS Definitions, ''515210 Cable and Other Subscription Programming''; *http://www.census.gov/naics/2007/def/ND515210.HTM#N515210.*

[134] 13 CFR 121.201, 2007 NAICS code 515210.

[135] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=700&-ds_name=EC0751SSSZ4&-_lang=en.*

[136] *Id.*

[137] *Id.*

[138] 15 U.S.C. 632.

[139] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small-business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

[140] 13 CFR 121.201, 2007 NAICS code 517110.

[141] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

fewer employees.[142] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.[143] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

24. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than $14.0 million in annual receipts.[144] Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' [145] The Commission has estimated the number of licensed commercial television stations to be 1,390.[146] According to Commission staff review of the BIA/Kelsey, MAPro Television Database (''BIA'') as of April 7, 2010, about 1,015 of an estimated 1,380 commercial television stations [147] (or about 74 percent) have revenues of $14 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 391.[148] We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [149] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

25. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

26. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.'' [150] We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: all such firms having $29.5 million dollars or less in annual revenues.[151] To gauge small business prevalence in the Motion Picture and Video Production industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 9,095 firms in this category that operated for the entire year.[152] Of these, 8995 had annual receipts of $24,999,999 or less, and 100 has annual receipts ranging from not less that $25,000,000 to $100,000,000 or more.[153] Thus, under this category and associated small business size standard, the majority of firms can be considered small.

27. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors.'' [154] We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: all such firms having $29.5 million dollars or less in annual revenues.[155] To gauge small business prevalence in the Motion Picture and Video Distribution industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 450 firms in this category that operated for the entire year.[156] Of these, 434 had annual receipts of $24,999,999 or less, and 16 had annual receipts ranging from not less that $25,000,000 to $100,000,000 or more.[157] Thus, under this category and associated small business size standard, the majority of firms can be considered small.

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[142] 13 CFR 121.201, 2007 NAICS code 517110.

[143] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[144] *See* 13 CFR 121.201, 2007 NAICS Code 515120.

[145] U.S. Census Bureau, 2007 NAICS Definitions, ''515120 Television Broadcasting''; *http://www.census.gov/naics/2007/def/ND515120.HTM.* This category description continues, ''These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.'' Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

[146] *See* News Release, ''Broadcast Station Totals as of December 31, 2010,'' 2011 WL 484756 (dated Feb. 11, 2011) (''*Broadcast Station Totals''*); also available at *http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0211/DOC-304594A1.pdf.*

[147] We recognize that this total differs slightly from that contained in *Broadcast Station Totals, supra,* note 105; however, we are using BIA's estimate for purposes of this revenue comparison.

[148] *See Broadcast Station Totals, supra,* note 146.

[149] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 121.103(a)(1).

[150] U.S. Census Bureau, 2007 NAICS Definitions, ''51211 Motion Picture and Video Production''; *http://www.census.gov/naics/2007/def/NDEF512.HTM#N51211.*

[151] 13 CFR 121.201, 2007 NAICS code 512110.

[152] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=200&-ds_name=EC0751SSSZ5&-_lang=en.*

[153] *Id.*

[154] *See* U.S. Census Bureau, 2007 NAICS Definitions, ''51212 Motion Picture and Video Distribution''; *http://www.census.gov/naics/2007/def/NDEF512.HTM#N51212.*

[155] 13 CFR 121.201, 2007 NAICS code 512120.

[156] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=200&-ds_name=EC0751SSSZ4&-_lang=en.*

[157] *Id.*

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

28. The rules adopted in the *Second Report and Order* in MB Docket No. 07–42 will impose additional reporting, recordkeeping, and compliance requirements on video programming vendors and MVPDs. First, the *Second Report and Order* in MB Docket No. 07–42 clarifies what evidence a complainant must provide in its program carriage complaint in order to establish a *prima facie* case of a program carriage violation.[158] Second, to enable the defendant to develop a full, case-specific response to the evidence put forth by the complainant, with supporting evidence, the *Second Report and Order* in MB Docket No. 07–42 provides the defendant with 60 days (rather than the current 30 days) to answer the complaint.[159] Third, in adopting a deadline for an ALJ to issue a decision on the merits of a program carriage complaint referred by Media Bureau, the *Second Report and Order* in MB Docket No. 07–42 adopts revised procedural deadlines applicable to adjudicatory hearings involving program carriage complaints.[160] Fourth, the *Second Report and Order* in MB Docket No. 07–42 establishes procedures for the Commission's consideration of requests for a temporary standstill of the price, terms, and other conditions of an existing programming contract by a program carriage complainant seeking renewal of such a contract.[161]

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

29. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[162] The *Program Carriage NPRM* invited comment on issues that had the potential to have significant economic impact on some small entities.[163]

30. As discussed in section A, the *Second Report and Order* in MB Docket No. 07–42 is intended to improve the Commission's procedures for addressing program carriage complaints. By clarifying the evidence a complainant must provide in its complaint to establish a *prima facie* case of a program carriage violation, providing defendants with additional time to answer a complaint, establishing deadlines for action on program carriage complaints, and establishing procedures for requesting a standstill of an existing programming contract, the decision confers benefits upon both video programming vendors and MVPDs, including those that are smaller entities, as well as MVPD subscribers. Thus, the decision benefits smaller entities as well as larger entities. For this reason, an analysis of alternatives to the proposed rules is unnecessary.

F. Report to Congress

31. The Commission will send a copy of the *Second Report and Order* in MB Docket No. 07–42, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[164] In addition, the Commission will send a copy of the *Second Report and Order* in MB Docket No. 07–42, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Second Report and Order* in MB Docket No. 07–42 and FRFA (or summaries thereof) will also be published in the **Federal Register.**[165]

V. Ordering Clauses

32. *It is ordered,* pursuant to the authority found in sections 4(i), 4(j), 303(r), and 616 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 536, the *Second Report and Order* in MB Docket No. 07–42 *Is Adopted.*

33. *It is further ordered* that, pursuant to the authority found in sections 4(i), 4(j), 303(r), and 616 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 536, the Commission's rules *Are Hereby Amended* as set forth in the Rules Changes below.

34. *It is further ordered* that the rules adopted herein are effective October 31, 2011, except for §§ 1.221(h), 1.229(b)(3), 1.229(b)(4), 1.248(a), 1.248(b), 76.7(g)(2), 76.1302(c)(1), 76.1302(d), 76.1302 (e)(1), and 76.1302(k) which contain new or modified information collection requirements that require approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act (PRA) and will become effective after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

35. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *Shall Send* a copy of this *Second Report and Order* in MB Docket No. 07–42, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

36. *It is further ordered* that the Commission *Shall Send* a copy of this *Second Report and Order* in MB Docket No. 07–42 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure, claims, Investigations, Lawyers, Telecommunications.

47 CFR Part 76

Administrative practice and procedure, Cable television, Equal employment opportunity, Political candidates, and Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 0, 1, and 76 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for Part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Section 0.341 is amended by adding paragraph (f) to read as follows:

[158] *See Second Report and Order* in MB Docket No. 07–42 at paras. 9–17.

[159] *See Second Report and Order* in MB Docket No. 07–42 at para. 18.

[160] *See Second Report and Order* in MB Docket No. 07–42 at paras. 19–24.

[161] *See Second Report and Order* in MB Docket No. 07–42 at paras. 25–30.

[162] 5 U.S.C. 603(c)(1)–(c)(4).

[163] *See Program Carriage NPRM,* 22 FCC Rcd at 11231–11240, Appendix.

[164] *See* 5 U.S.C. 801(a)(1)(A).

[165] *See* 5 U.S.C. 604(b).

§ 0.341 Authority of administrative law judge.

* * * * *

(f)(1) For program carriage complaints filed pursuant to § 76.1302 of this chapter that the Chief, Media Bureau refers to an administrative law judge for an initial decision, the presiding administrative law judge shall release an initial decision in compliance with one of the following deadlines:

(i) 240 calendar days after a party informs the Chief Administrative Law Judge that it elects not to pursue alternative dispute resolution as set forth in § 76.7(g)(2) of this chapter; or

(ii) If the parties have mutually elected to pursue alternative dispute resolution pursuant to § 76.7(g)(2) of this chapter, within 240 calendar days after the parties inform the Chief Administrative Law Judge that they have failed to resolve their dispute through alternative dispute resolution.

(2) The presiding administrative law judge may toll these deadlines under the following circumstances:

(i) If the complainant and defendant jointly request that the presiding administrative law judge toll these deadlines in order to pursue settlement discussions or alternative dispute resolution or for any other reason that the complainant and defendant mutually agree justifies tolling; or

(ii) If complying with the deadline would violate the due process rights of a party or would be inconsistent with fundamental fairness; or

(iii) In extraordinary situations, due to a lack of adjudicatory resources available at the time in the Office of Administrative Law Judges.

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309.

■ 4. Section 1.221 is amended by adding paragraph (h) to read as follows:

§ 1.221 Notice of hearing; appearances.

* * * * *

(h)(1) For program carriage complaints filed pursuant to § 76.1302 of this chapter that the Chief, Media Bureau refers to an administrative law judge for an initial decision, each party, in person or by attorney, shall file a written appearance within five calendar days after the party informs the Chief Administrative Law Judge that it elects not to pursue alternative dispute resolution pursuant to § 76.7(g)(2) of this chapter or, if the parties have mutually elected to pursue alternative dispute resolution pursuant to § 76.7(g)(2) of this chapter, within five calendar days after the parties inform the Chief Administrative Law Judge that they have failed to resolve their dispute through alternative dispute resolution. The written appearance shall state that the party will appear on the date fixed for hearing and present evidence on the issues specified in the hearing designation order.

(2) If the complainant fails to file a written appearance by this deadline, or fails to file prior to the deadline either a petition to dismiss the proceeding without prejudice or a petition to accept, for good cause shown, a written appearance beyond such deadline, the Chief Administrative Law Judge shall dismiss the complaint with prejudice for failure to prosecute.

(3) If the defendant fails to file a written appearance by this deadline, or fails to file prior to this deadline a petition to accept, for good cause shown, a written appearance beyond such deadline, its opportunity to present evidence at hearing will be deemed to have been waived. If the hearing is so waived, the Chief Administrative Law Judge shall expeditiously terminate the proceeding and certify to the Commission the complaint for resolution based on the existing record.

* * * * *

■ 5. Section 1.229 is amended by redesignating paragraph (b)(3) as (b)(4), revising newly redesignated paragraph (b)(4), and adding new paragraph (b)(3), to read as follows:

§ 1.229 Motions to enlarge, change, or delete issues.

* * * * *

(b) * * *

(3) For program carriage complaints filed pursuant to § 76.1302 of this chapter that the Chief, Media Bureau refers to an administrative law judge for an initial decision, such motions shall be filed within 15 calendar days after the deadline for submitting written appearances pursuant to § 1.221(h), except that persons not named as parties to the proceeding in the designation order may file such motions with their petitions to intervene up to 30 days after publication of the full text or a summary of the designation order in the **Federal Register**. (See § 1.223).

(4) Any person desiring to file a motion to modify the issues after the expiration of periods specified in paragraphs (a), (b)(1), (b)(2), and (b)(3) of this section, shall set forth the reason why it was not possible to file the motion within the prescribed period. Except as provided in paragraph (c) of this section, the motion will be granted only if good cause is shown for the delay in filing. Motions for modifications of issues which are based on new facts or newly discovered facts shall be filed within 15 days after such facts are discovered by the moving party.

* * * * *

■ 6. Section 1.248 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 1.248 Prehearing conferences; hearing conferences.

(a) The Commission, on its own initiative or at the request of any party, may direct the parties or their attorneys to appear at a specified time and place for a conference prior to a hearing, or to submit suggestions in writing, for the purpose of considering, among other things, the matters set forth in paragraph (c) of this section. The initial prehearing conference shall be scheduled 30 days after the effective date of the order designating a case for hearing, unless good cause is shown for scheduling such conference at a later date, except that for program carriage complaints filed pursuant to § 76.1302 of this chapter that the Chief, Media Bureau refers to an administrative law judge for an initial decision, the initial prehearing conference shall be held no later than 10 calendar days after the deadline for submitting written appearances pursuant to § 1.221(h) or within such shorter or longer period as the Commission may allow on motion or notice consistent with the public interest.

(b)(1) The presiding officer (or the Commission or a panel of commissioners in a case over which it presides), on his own initiative or at the request of any party, may direct the parties or their attorneys to appear at a specified time and place for a conference prior to or during the course of a hearing, or to submit suggestions in writing, for the purpose of considering any of the matters set forth in paragraph (c) of this section. The initial prehearing conference shall be scheduled 30 days after the effective date of the order designating a case for hearing, unless good cause is shown for scheduling such conference at a later date, except that for program carriage complaints filed pursuant to § 76.1302 of this chapter that the Chief, Media Bureau refers to an administrative law judge for an initial decision, the initial prehearing conference shall be held no later than 10 calendar days after the deadline for submitting written appearances pursuant to § 1.221(h) or within such

shorter or longer period as the presiding officer may allow on motion or notice consistent with the public interest.

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 7. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

■ 8. Section 76.7 is amended by revising paragraph (g)(2) to read as follows:

§ 76.7 General special relief, waiver, enforcement, complaint, show cause, forfeiture, and declaratory ruling procedures.

* * * * *

(g) * * *

(2) Before designation for hearing, the staff shall notify, either orally or in writing, the parties to the proceeding of its intent to so designate, and the parties shall be given a period of ten (10) days to elect to resolve the dispute through alternative dispute resolution procedures, or to proceed with an adjudicatory hearing. Such election shall be submitted in writing to the Commission and the Chief Administrative Law Judge.

* * * * *

■ 9. Section 76.1302 is amended by revising paragraphs (c) through (g) and adding paragraphs (h) through (k) to read as follows:

§ 76.1302 Carriage agreement proceedings.

* * * * *

(c) *Contents of complaint.* In addition to the requirements of § 76.7, a carriage agreement complaint shall contain:

(1) Whether the complainant is a multichannel video programming distributor or video programming vendor, and, in the case of a multichannel video programming distributor, identify the type of multichannel video programming distributor, the address and telephone number of the complainant, what type of multichannel video programming distributor the defendant is, and the address and telephone number of each defendant;

(2) Evidence that supports complainant's belief that the defendant, where necessary, meets the attribution standards for application of the carriage agreement regulations;

(3) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (b) of this section has been made.

(d) *Prima facie case.* In order to establish a *prima facie* case of a violation of § 76.1301, the complaint must contain evidence of the following:

(1) The complainant is a video programming vendor as defined in section 616(b) of the Communications Act of 1934, as amended, and § 76.1300(e) or a multichannel video programming distributor as defined in section 602(13) of the Communications Act of 1934, as amended, and § 76.1300(d);

(2) The defendant is a multichannel video programming distributor as defined in section 602(13) of the Communications Act of 1934, as amended, and § 76.1300(d); and

(3)(i) *Financial interest.* In a complaint alleging a violation of § 76.1301(a), documentary evidence or testimonial evidence (supported by an affidavit from a representative of the complainant) that supports the claim that the defendant required a financial interest in any program service as a condition for carriage on one or more of such defendant's systems.

(ii) *Exclusive rights.* In a complaint alleging a violation of § 76.1301(b), documentary evidence or testimonial evidence (supported by an affidavit from a representative of the complainant) that supports the claim that the defendant coerced a video programming vendor to provide, or retaliated against such a vendor for failing to provide, exclusive rights against any other multichannel video programming distributor as a condition for carriage on a system.

(iii) *Discrimination.* In a complaint alleging a violation of § 76.1301(c):

(A) Evidence that the conduct alleged has the effect of unreasonably restraining the ability of an unaffiliated video programming vendor to compete fairly; and

(B) (*1*) Documentary evidence or testimonial evidence (supported by an affidavit from a representative of the complainant) that supports the claim that the defendant discriminated in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors; or

(*2*) (*i*) Evidence that the complainant provides video programming that is similarly situated to video programming provided by a video programming vendor affiliated (as defined in § 76.1300(a)) with the defendant multichannel video programming distributor, based on a combination of factors, such as genre, ratings, license fee, target audience, target advertisers, target programming, and other factors; and

(*ii*) Evidence that the defendant multichannel video programming distributor has treated the video programming provided by the complainant differently than the similarly situated, affiliated video programming described in paragraph (d)(3)(iii)(B)(*2*)(*i*) of this section with respect to the selection, terms, or conditions for carriage.

(e) *Answer.* (1) Any multichannel video programming distributor upon which a carriage agreement complaint is served under this section shall answer within sixty (60) days of service of the complaint, unless otherwise directed by the Commission.

(2) The answer shall address the relief requested in the complaint, including legal and documentary support, for such response, and may include an alternative relief proposal without any prejudice to any denials or defenses raised.

(f) *Reply.* Within twenty (20) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

(g) *Prima facie determination.* (1) Within sixty (60) calendar days after the complainant's reply to the defendant's answer is filed (or the date on which the reply would be due if none is filed), the Chief, Media Bureau shall release a decision determining whether the complainant has established a *prima facie* case of a violation of § 76.1301.

(2) The Chief, Media Bureau may toll the sixty (60)-calendar-day deadline under the following circumstances:

(i) If the complainant and defendant jointly request that the Chief, Media Bureau toll these deadlines in order to pursue settlement discussions or alternative dispute resolution or for any other reason that the complainant and defendant mutually agree justifies tolling; or

(ii) If complying with the deadline would violate the due process rights of a party or would be inconsistent with fundamental fairness.

(3) A finding that the complainant has established a *prima facie* case of a violation of § 76.1301 means that the complainant has provided sufficient evidence in its complaint to allow the case to proceed to a ruling on the merits.

(4) If the Chief, Media Bureau finds that the complainant has not established a *prima facie* case of a violation of

§ 76.1301, the Chief, Media Bureau will dismiss the complaint.

(h) *Time limit on filing of complaints.* Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs:

(1) The multichannel video programming distributor enters into a contract with a video programming distributor that a party alleges to violate one or more of the rules contained in this section; or

(2) The multichannel video programming distributor offers to carry the video programming vendor's programming pursuant to terms that a party alleges to violate one or more of the rules contained in this section, and such offer to carry programming is unrelated to any existing contract between the complainant and the multichannel video programming distributor; or

(3) A party has notified a multichannel video programming distributor that it intends to file a complaint with the Commission based on violations of one or more of the rules contained in this section.

(i) *Deadline for decision on the merits.* (1)(i) For program carriage complaints that the Chief, Media Bureau decides on the merits based on the complaint, answer, and reply without discovery, the Chief, Media Bureau shall release a decision on the merits within sixty (60) calendar days after the Chief, Media Bureau's *prima facie* determination.

(ii) For program carriage complaints that the Chief, Media Bureau decides on the merits after discovery, the Chief, Media Bureau shall release a decision on the merits within 150 calendar days after the Chief, Media Bureau's *prima facie* determination.

(iii) The Chief, Media Bureau may toll these deadlines under the following circumstances:

(A) If the complainant and defendant jointly request that the Chief, Media Bureau toll these deadlines in order to pursue settlement discussions or alternative dispute resolution or for any other reason that the complainant and defendant mutually agree justifies tolling; or

(B) If complying with the deadline would violate the due process rights of a party or would be inconsistent with fundamental fairness.

(2) For program carriage complaints that the Chief, Media Bureau refers to an administrative law judge for an initial decision, the deadlines set forth in § 0.341(f) of this chapter apply.

(j) *Remedies for violations*—(1) *Remedies authorized.* Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, mandatory carriage of a video programming vendor's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor's programming. Such order shall set forth a timetable for compliance, and shall become effective upon release, unless any order of mandatory carriage would require the defendant multichannel video programming distributor to delete existing programming from its system to accommodate carriage of a video programming vendor's programming. In such instances, if the defendant seeks review of the staff, or administrative law judge decision, the order for carriage of a video programming vendor's programming will not become effective unless and until the decision of the staff or administrative law judge is upheld by the Commission. If the Commission upholds the remedy ordered by the staff or administrative law judge in its entirety, the defendant will be required to carry the video programming vendor's programming for an additional period equal to the time elapsed between the staff or administrative law judge decision and the Commission's ruling, on the terms and conditions approved by the Commission.

(2) *Additional sanctions.* The remedies provided in paragraph (j)(1) of this section are in addition to and not in lieu of the sanctions available under title V or any other provision of the Communications Act.

(k) *Petitions for temporary standstill.* (1) A program carriage complainant seeking renewal of an existing programming contract may file a petition along with its complaint requesting a temporary standstill of the price, terms, and other conditions of the existing programming contract pending resolution of the complaint. To allow for sufficient time to consider the petition for temporary standstill prior to the expiration of the existing programming contract, the petition for temporary standstill and complaint shall be filed no later than thirty (30) days prior to the expiration of the existing programming contract. In addition to the requirements of § 76.7, the complainant shall have the burden of proof to demonstrate the following in its petition:

(i) The complainant is likely to prevail on the merits of its complaint;

(ii) The complainant will suffer irreparable harm absent a stay;

(iii) Grant of a stay will not substantially harm other interested parties; and

(iv) The public interest favors grant of a stay.

(2) The defendant multichannel video programming distributor upon which a petition for temporary standstill is served shall answer within ten (10) days of service of the petition, unless otherwise directed by the Commission.

(3) If the Commission grants the temporary standstill, the adjudicator deciding the case on the merits (*i.e.,* either the Chief, Media Bureau or an administrative law judge) will provide for remedies that are applied as of the expiration date of the previous programming contract.

[FR Doc. 2011–24240 Filed 9–28–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 11–131; FCC 11–119]

Revision of the Commission's Program Carriage Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In 1993, the Federal Communications Commission (FCC) adopted rules pertaining to carriage of video programming vendors by multichannel video programming distributors (''MVPDs''), known as the ''program carriage rules.'' The rules are intended to benefit consumers by promoting competition and diversity in the video programming and video distribution markets. In this document, the FCC seeks comment on proposed revisions to or clarifications of the program carriage rules, which are intended to further improve the Commission's procedures and to advance the goals of the program carriage statute.

DATES: Submit comments on or before November 28, 2011, and submit reply comments on or before December 28, 2011. See **SUPPLEMENTARY INFORMATION** section for additional comment dates.

ADDRESSES: You may submit comments, identified by MB Docket No. 11–131, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act proposed information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact David Konczal, *David.Konczal@fcc.gov,* of the Media Bureau, Policy Division, 202–418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at 202–418–2918. To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of the ICR as show in the **SUPPLEMENTARY INFORMATION** section below (3060–0649) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), MB Docket No. 11–131, FCC No. 11–119, adopted on July 29, 2011 and released on August 1, 2011. The full text of the *NPRM* is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling 800–378–3160, facsimile 202–488–5563, or e-mail *FCC@BCPIWEB.com.* Copies of the *NPRM* also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, MB Docket No. 11–131. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before November 28, 2011.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0888.

Title: Section 76.7, Petition Procedures; § 76.9, Confidentiality of Proprietary Information; § 76.61, Dispute Concerning Carriage; § 76.914, Revocation of Certification; § 76.1001, Unfair Practices; § 76.1003, Program Access Proceedings; § 76.1302, Carriage Agreement Proceedings; § 76.1303, Discovery; § 76.1513, Open Video Dispute Resolution.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 648.

Estimated Time per Response: 5.2 to 78 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in contained in sections 4(i), 303(r), and 616 of the Communications Act of 1934, as amended.

Total Annual Burden: 26,957 hours.

Total Annual Cost: $1,749,600.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: A party that wishes to have confidentiality for proprietary information with respect to a submission it is making to the Commission must file a petition pursuant to the pleading requirements in § 76.7 and use the method described in §§ 0.459 and 76.9 to demonstrate that confidentiality is warranted.

Needs and Uses: On August 1, 2011, the Commission adopted a Notice of Proposed Rulemaking (''*NPRM*''), Revision of the Commission's Program Carriage Rules, MB Docket No. 11–131, FCC 11–119. The Commission seeks comment on revisions to or clarifications of the program carriage rules, which are intended to further improve the Commission's procedures and to advance the goals of the program carriage statute.

The *NPRM* proposes to add or revise the following rules sections: 47 CFR 76.1302(c)(4), 47 CFR 76.1302(d)(3)(iii), 47 CFR 76.1302(d)(3)(iv), 47 CFR 76.1302(d)(3)(v), 47 CFR 76.1302(e)(3), 47 CFR 76.1302(h), 47 CFR 76.1302(j)(1), 47 CFR 76.1302(j)(3), 47 CFR 76.1302(j)(4), 47 CFR 76.1302(k)(3), and 47 CFR 76.1303.

If adopted, 47 CFR 76.1302(c)(4) would provide that, in a case where recovery of damages is sought, the complaint shall contain a clear and unequivocal request for damages and appropriate allegations in support of such claim, and lists the information that must be included in the complaint when requesting damages.

47 CFR 76.1302(d)(3)(iii) sets forth the evidence that a program carriage complaint filed pursuant to § 76.1302 must contain in order to establish a *prima facie* case of discrimination in violation of § 76.1301, and, if the revision in the *NPRM* is adopted, would also apply to new claims alleging that a vertically integrated MVPD has discriminated on the basis of a programming vendor's lack of affiliation with another MVPD.

If adopted, 47 CFR 76.1302(d)(3)(iv) would set forth the evidence that a program carriage complaint filed pursuant to § 76.1302 must contain in order to establish a *prima facie* case of retaliation in violation of § 76.1301.

If adopted, 47 CFR 76.1302(d)(3)(v) would set forth the evidence that a program carriage complaint filed pursuant to § 76.1302 must contain in order to establish a *prima facie* case of bad faith negotiations in violation of § 76.1301.

If adopted, 47 CFR 76.1302(e)(3) would require a multichannel video programming distributor that expressly references and relies upon a document or documents in asserting a defense to a program carriage complaint or in responding to a material allegation in a program carriage complaint, to include such document or documents as part of the answer.

If the revision in the *NPRM* is adopted, 47 CFR 76.1302(h) would state that any complaint filed pursuant to this subsection must be filed within one year of the date on which the alleged violation of the program carriage rules occurred.

If the revision in the *NPRM* is adopted, 47 CFR 76.1302(j)(1) would state that upon completion of an adjudicatory proceeding, the adjudicator deciding the case on the merits (*i.e.,* either the Chief, Media Bureau or an administrative law judge) shall order appropriate remedies, including, if necessary, mandatory carriage of a video programming vendor's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor's programming. Such order shall set forth a timetable for compliance, and shall become effective upon release, unless the adjudicator rules that the defendant has made a sufficient evidentiary showing that demonstrates that an order of mandatory carriage would require the defendant multichannel video programming distributor to delete existing programming from its system to accommodate carriage of a video programming vendor's programming. In such instances, if the defendant seeks review of the staff, or administrative law judge decision, the order for carriage of a video programming vendor's programming will not become effective unless and until the decision of the staff or administrative law judge is upheld by the Commission.

If adopted, 47 CFR 76.1302(j)(3) would provide that, to assist in ordering an appropriate remedy, the adjudicator has the discretion to order the complainant and the defendant to each submit a final offer for the prices, terms, or conditions in dispute. The adjudicator has the discretion to adopt one of the final offers or to fashion its own remedy.

If adopted, 47 CFR 76.1302(j)(4) would provide that the (i) adjudicator may require the complainant to resubmit a damages computation or damages methodology filed pursuant to § 76.1302(c)(4); and (ii) where the adjudicator issues a written order approving or modifying a damages methodology, the parties shall negotiate in good faith to reach an agreement on the exact amount of damages pursuant to the adjudicator-mandated methodology and within thirty (30) days of the issuance of a damages methodology order, the parties shall submit jointly to the adjudicator either: (1) A statement detailing the parties' agreement as to the amount of damages; (2) A statement that the parties are continuing to negotiate in good faith and a request that the parties be given an extension of time to continue negotiations; or (3) A statement detailing the bases for the continuing dispute and the reasons why no agreement can be reached.

If the revision in the *NPRM* is adopted, 47 CFR 76.1302(k)(3) would provide that, in cases where a standstill petition is granted, the adjudicator, in order to facilitate the application of remedies as of the expiration date of the previous programming contract, may request after deciding the case on the merits that the party seeking to apply the remedies as of the expiration date of the previous programming contract to submit a proposal for such application of remedies pursuant to the procedures for requesting damages set forth in § 76.1302(c)(4) and § 76.1302(j)(4). An opposition to such a proposal shall be filed within ten (10) days after the proposal is filed. A reply to an opposition shall be filed within five (5) days after the opposition is filed.

If adopted, 47 CFR 76.1303 would provide for discovery procedures in complaint proceedings alleging a violation of § 76.1301 in which the Chief, Media Bureau acts as the adjudicator. With respect to automatic document production, within ten (10) calendar days after the Chief, Media Bureau releases a decision finding that the complainant has established a *prima facie* case of a violation of § 76.1301 and stating that the Chief, Media Bureau will issue a ruling on the merits of the complaint after discovery, each party must provide certain documents listed in the Commission's rules to the opposing party. With respect to party-to-party discovery, within twenty (20) calendar days after the Chief, Media Bureau releases a decision finding that the complainant has established a *prima*

facie case of a violation of § 76.1301 and stating that the Chief, Media Bureau will issue a ruling on the merits of the complaint after discovery, each party to the complaint may serve requests for discovery directly on the opposing party, and file a copy of the request with the Commission. Within five (5) calendar days after being served with a discovery request, the respondent may serve directly on the party requesting discovery an objection to any request for discovery that is not in the respondent's control or relevant to the dispute, and file a copy of the objection with the Commission. Within five (5) calendar days after being served with an objection to a discovery request, the party requesting discovery may serve a reply to the objection directly on the respondent, and file a copy of the reply with the Commission. To the extent that a party has objected to a discovery request, the parties shall meet and confer to resolve the dispute. Within forty (40) calendar days after the Chief, Media Bureau releases a decision finding that the complainant has established a *prima facie* case of a violation of § 76.1301 and stating that the Chief, Media Bureau will issue a ruling on the merits of the complaint after discovery, the parties shall file with the Commission a joint proposal for discovery as well as a list of issues pertaining to discovery that have not been resolved.

All other remaining existing information collection requirements would stay as they are, and the various burden estimates would be revised to reflect the new and revised rules noted above.

Summary of the Notice of Proposed Rulemaking

I. Notice of Proposed Rulemaking

1. In this *NPRM* in MB Docket No. 11–131, we seek comment on the following additional revisions or clarifications to both our procedural and substantive program carriage rules, which are intended to facilitate the resolution of program carriage claims.[1] We also invite commenters to suggest any other changes to our program carriage rules that would improve our procedures and promote the goals of the program carriage statute.

A. Statute of Limitations

2. The current program carriage statute of limitations set forth in § 76.1302(f) provides that a complaint must be filed ''within one year of the date on which one of the following events occurs:

(1) The multichannel video programming distributor enters into a contract with a video programming distributor that a party alleges to violate one or more of the rules contained in this section; or

(2) The multichannel video programming distributor offers to carry the video programming vendor's programming pursuant to terms that a party alleges to violate one or more of the rules contained in this section, and such offer to carry programming is unrelated to any existing contract between the complainant and the multichannel video programming distributor; or

(3) A party has notified a multichannel video programming distributor that it intends to file a complaint with the Commission based on violations of one or more of the rules contained in this section.'' [2]

Our concern is with § 76.1302(f)(3), which states that a complaint is timely if filed within one year of when the complainant notified the defendant MVPD of its intention to file a complaint and contains no reference to when the alleged violation of the program carriage rules occurred.[3] In other words, the rule could be read to provide that, even if the act alleged to have violated the program carriage rules occurred many years before the filing of the complaint, the complaint is nonetheless timely if filed within one year of when the complainant notified the defendant MVPD of its intention to file. Moreover, the introductory language to § 76.1302(f) provides that a complaint must be filed ''within one year of the date on which one of the following events occurs,'' which implies that a complaint filed in compliance with § 76.1302(f)(3) is timely even if it would be untimely under §§ 76.1302(f)(1) or (f)(2). Thus, it appears that § 76.1302(f)(3) undermines the fundamental purpose of a statute of limitations ''to protect a potential defendant against stale and vexatious claims by ending the possibility of litigation after a reasonable period of time has elapsed.''

3. In light of these concerns, we propose to revise our program carriage statute of limitations to provide that a complaint must be filed within one year of the act that allegedly violated the program carriage rules. We seek comment on any potential ramifications of this revised statute of limitations on programming vendors and MVPDs. We recognize that the issue of when the act that allegedly violated the rules occurred is fact-specific and in some cases may be subject to differing views between the parties. For example, to the extent that the claim involves denial of carriage, an issue might arise as to whether the denial occurred when the MVPD first rejected a programming vendor's request for carriage early in the negotiation process or whether the denial occurred later after further carriage discussions. We expect that the adjudicator will be able to resolve such issues on a case-by-case basis. We believe our proposed rule revision will ensure that program carriage complaints are filed on a timely basis and will provide certainty to both MVPDs and prospective complainants. We propose that this revised statute of limitations will replace § 76.1302(f) in its entirety, thereby providing for one broad rule covering all program carriage claims. Alternatively, we could replace only § 76.1302(f)(3) with this revised statute of limitations and retain § 76.1302(f)(1) and (f)(2). Because this revised statute of limitations would appear to cover the claims referred to in § 76.1302(f)(1) and (f)(2), however, replacing § 76.1302(f) in its entirety appears to be warranted. We ask parties to comment on this issue.

4. To the extent we retain § 76.1302(f)(1), we propose to make a minor clarification. As amended in the *1998 Biennial Regulatory Review Order,* the rule currently provides that a complaint must be filed within one year of the date when a ''multichannel video programming distributor enters into a contract with a video programming *distributor''* that a party alleges to

[1] Unless otherwise noted, all references to comments, reply comments, or letters in this *NPRM* refer to submissions filed in response to the *Program Carriage NPRM* in MB Docket No. 07–42. *See Program Carriage NPRM,* MB Docket No. 07–42, 22 FCC Rcd 11222 (2007).

[2] 47 CFR 76.1302(f). This rule will now appear at § 76.1302(h) once the amendments adopted in the *Second Report and Order* in MB Docket No. 07–42 take effect.

[3] As originally adopted in the *1993 Program Carriage Order,* the rule that is now § 76.1302(f)(3) formerly read that a complaint must be filed within one year of the date when ''the complainant has notified a multichannel video programming distributor that it intends to file a complaint with the Commission based on a request for carriage or to negotiate for carriage of its programming on defendant's distribution system that has been denied or unacknowledged, allegedly in violation of one or more of the rules contained in this subpart.'' *See 1993 Program Carriage Order,* 9 FCC Rcd at 2652–53, para. 25 and 2676, Appendix D (47 CFR 76.1302(r)(3)). In the *1994 Program Carriage Order,* the Commission eliminated without explanation the language in this rule specifying that the complainant's notice of intent would be ''based on a request for carriage or to negotiate for carriage of its programming on defendant's distribution system that has been denied or unacknowledged.'' The Commission replaced the rule with the current language, with a minor edit adopted in the *1998 Biennial Regulatory Review Order. See 1994 Program Carriage Order,* 9 FCC Rcd at 4421, Appendix A (47 CFR 76.1302(r)(3)); *1998 Biennial Regulatory Review Order,* 14 FCC Rcd at 441, Appendix A (changing the word ''subpart'' to ''section'').

violate one or more of the program carriage rules. The program carriage statute and rules, however, pertain to contracts, and negotiations related thereto, between MVPDs and video programming *vendors,* not distributors. Indeed, section 616 of the Act refers to ''video programming *vendors.''* Consistent with the statute, the previous version of this rule adopted in the *1994 Program Carriage Order* accurately stated that the contract must be entered into with a ''video programming *vendor,''* not a ''distributor.'' Accordingly, to the extent we retain § 76.1302(f)(1), we propose to replace the term ''video programming distributor'' with ''video programming vendor.''

B. Discovery

5. We seek comment on whether to revise our discovery procedures for program carriage complaint proceedings in which the Media Bureau rules on the merits of the complaint after discovery. As discussed above, if the Media Bureau finds that the complainant has established a *prima facie* case but determines that it cannot resolve the complaint based on the existing record, the Media Bureau may outline procedures for discovery before proceeding to rule on the merits of the complaint or it may refer the proceeding or discrete issues raised in the proceeding for an adjudicatory hearing before an ALJ. To the extent the Media Bureau proceeds to develop discovery procedures, the *1993 Program Carriage Order* provides that ''[w]herever possible, to avoid discovery disputes and arguments pertaining to relevance, the staff will itself conduct discovery by issuing appropriate letters of inquiry or requiring that specific documents be produced.'' [4] We seek comment on revising the Media Bureau's discovery process for program carriage complaints based on the following: (i) Expanded discovery procedures (also known as party-to-party discovery) similar to the procedures that exist for program access complaints; and (ii) an automatic document production process that is narrowly tailored to program carriage complaints. This discovery process would be in addition to the Media Bureau's ability to order discovery under § 76.7(f). We also seek comment on any other approaches to discovery. Our goal is to establish a discovery process that ensures the expeditious resolution of complaints while also ensuring fairness to all parties.

1. Expanded Discovery Procedures

6. We seek comment on whether to adopt expanded discovery procedures for program carriage complaint proceedings in which the Media Bureau rules on the merits of the complaint after discovery similar to the procedures that exist for program access cases. Under the current program carriage rules, discovery is Commission-controlled, meaning that Media Bureau staff identifies the matters for which discovery is needed and then issues letters of inquiry to the parties on those matters or requires the parties to produce specific documents related to those matters. Under the expanded discovery procedures applicable to program access cases, however, discovery is controlled by the parties. As an initial matter, the program access rules provide that, to the extent the defendant expressly references and relies upon a document in asserting a defense or responding to a material allegation, the document must be included as part of the answer. In addition, parties to a program access complaint may serve requests for discovery directly on opposing parties rather than relying on the Media Bureau staff to seek discovery through letters of inquiry or document requests. The respondent may object to any request for documents that are not in its control or relevant to the dispute.[5] The obligation to produce the disputed material is suspended until the Commission rules on the objection. Any party who fails to timely provide discovery requested by the opposing party to which it has not raised an objection, or who fails to respond to a Commission order for discovery material, may be deemed in default and an order may be entered in accordance with the allegations contained in the complaint, or the complaint may be dismissed with prejudice. We seek comment on whether these are appropriate discovery procedures for program carriage complaints decided on by the Media Bureau after discovery. Is there any basis to believe that expanded discovery procedures are appropriate for program access cases but not program carriage cases? Will expanded discovery procedures hinder the Media Bureau's ability to comply with the expedited deadline adopted in the *Second Report and Order* for the resolution of program carriage complaints? [6] Are the parties to a complaint in a better position to determine what information is needed to support their cases than Media Bureau staff, thus establishing expanded discovery procedures as fairer to all parties than Commission-controlled discovery? Should we make clear that expanded discovery procedures apply to all forms of discovery, including document production, interrogatories, and depositions? [7] We note that, as described below, to ensure that confidential information is not improperly used for competitive business purposes, we seek comment on adopting a more stringent standard protective order and declaration than is currently used in program access cases.

7. One potential concern with expanded discovery procedures is that they will lead to overbroad discovery requests and extended disputes pertaining to relevance, which the Commission recognized as a concern in the *1993 Program Carriage Order* when it allowed for only Commission-controlled discovery. To ensure an expeditious discovery process, should we impose a numerical limit on the number of document requests, interrogatories, and depositions a party may request? Should we establish specific deadlines for the discovery process in order to enable the Media Bureau to meet the 150-calendar-day resolution deadline? For example, although not currently specified in our program access rules, we seek comment on whether to establish deadlines by when parties must submit discovery requests, objections thereto, and replies

[4] *See 1993 Program Carriage Order,* 9 FCC Rcd at 2655–56, para. 32; *see also id.* at 2652, para. 23 (providing that discovery will ''not necessarily be permitted as a matter of right in all cases, but only as needed on a case-by-case basis, as determined by the staff''); *see also* 47 CFR 76.7(f).

[5] *See* 47 CFR 76.1003(j); *2007 Program Access Order,* 22 FCC Rcd at 17852, para. 98. We note that a Petition for Reconsideration of the *2007 Program Access Order* is pending that argues that our rules should clarify that a party is able to object based on privilege in addition to objecting on the grounds of lack of control or relevance. *See* Fox Entertainment Group, Inc., Petition for Reconsideration, MB Docket No. 07–29 (Nov. 5, 2007), at 10.

[6] *See Second Report and Order* in MB Docket No. 07–42, para. 21 (establishing that, in cases that the Media Bureau decides on the merits after discovery, the Media Bureau must issue a decision within 150 calendar days after its *prima facie* determination). We note that while the Commission has established aspirational goals for the resolution of program access complaints, those deadlines do not apply to cases involving complex discovery. *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Petition for Rulemaking of Ameritech New Media, Inc. Regarding Development of Competition and Diversity in Video Programming Distribution and Carriage,* Report and Order, 13 FCC Rcd 15822, 15842–43, para. 41 (1998) (''*1998 Program Access Order*''); *see also 2007 Program Access Order,* 22 FCC Rcd at 17857, para. 108 (reaffirming aspirational goals set forth in the *1998 Program Access Order*).

[7] *Compare 1993 Program Carriage Order,* 9 FCC Rcd at 2652, para. 23 and 2655–56, para. 32 (referring to the Media Bureau's ordering of document production and interrogatories) *with* 47 CFR 76.7(f)(1) (referring to the Media Bureau's ordering of depositions in addition to document production and interrogatories).

to objections, such as 20, 25, and 30 calendar days respectively after the Media Bureau's *prima facie* determination in which it states that it will rule on the merits of the complaint after discovery.[8] We also seek comment on whether to require the parties to meet and confer to attempt to mutually resolve their discovery disputes and to submit a joint comprehensive discovery proposal to the Media Bureau within 40 calendar days after the Media Bureau's *prima facie* determination, with any remaining unresolved issues to be ruled on by the Media Bureau. We also seek input on whether to establish a firm deadline for when discovery must be completed, such as 75 calendar days after the Media Bureau's *prima facie* determination, and for the submission of post-discovery briefs and reply briefs, such as 20 calendar days and ten calendar days, respectively, after the conclusion of discovery.[9] With these deadlines, the Media Bureau would have 45 days to prepare and release a decision on the merits.

2. Automatic Document Production

8. In addition to expanded discovery procedures, we seek comment on an automatic document production process that is narrowly tailored to the issues raised in program carriage complaints. Under this approach, if the Media Bureau issues a decision finding that a complaint contains sufficient evidence to establish a *prima facie* case and stating that it will rule on the merits of the complaint after discovery, both parties would have a certain period of time to produce basic threshold documents listed in the Commission's rules that are relevant to the program carriage claim at issue. The Commission adopted a similar approach for comparative broadcast proceedings involving applications for new facilities. Under those procedures, after the issuance of an HDO, applicants were required to produce documents enumerated in a standardized document production order set forth in the Commission's rules. The Commission adopted this approach because it would result in ''substantial time savings.'' [10] Should we establish a similar approach for program carriage cases? We believe that this process could work in conjunction with the expanded discovery procedures outlined above. For example, within ten calendar days after the Media Bureau issues a decision finding that the complaint contains sufficient evidence to establish a *prima facie* case and stating that it will rule on the merits of the complaint after discovery, both parties would produce the documents in the automatic document production list set forth in the Commission's rules for the specific program carriage claim at issue.[11] Is this a sufficient amount of time for production, considering that the required documents will be listed in our rules and thus parties will have advanced notice as to what documents must be produced? Based on the documents produced, the parties would then proceed to request additional discovery pursuant to the deadlines set forth above (*i.e.,* discovery requests, objections thereto, and responses to objections would be due 20, 25 and 30 calendar days respectively after the Media Bureau's *prima facie* determination). To the extent that we do not adopt automatic document production, the initial ten-day production period would not be required; thus, we also seek comment on more expeditious deadlines for submitting discovery requests, objections thereto, and responses to objections in the event we do not adopt automatic document production.

9. We seek input on whether automatic document production will result in substantial time savings and thereby more expeditious resolution of program carriage complaints. We ask commenters to consider the following ways in which automatic document production might expedite discovery. First, by establishing that certain documents are relevant for a program carriage claim, automatic document production should reduce delay resulting from debates over relevancy. Second, automatic document production should enable the parties to identify early in the discovery process any individuals they seek to depose. Third, by providing advanced notice of documents that are relevant, parties should have sufficient time to gather these documents and to produce them promptly. Fourth, automatic document production may prevent delays in obtaining any necessary third-party consent. Production of certain documents, such as programming contracts, may require third-party consent before disclosure, resulting in a delay in the production of documents. The automatic document production list should help address this concern by providing the parties with advanced notice that they may have to produce certain documents in the event of a *prima facie* finding, thus providing parties with time to secure any required third-party consents. Are there any other advantages or disadvantages with an automatic document production process?

10. To the extent we adopt an automatic document production process, we seek comment on what documents must be produced. The types of documents will necessarily vary based on whether the claim is a violation of the financial interest, exclusivity, or discrimination provision. Below we suggest some documents that might be considered sufficiently relevant to include in the automatic document production list. We seek comment on whether specific documents should be added or removed.

Financial Interest Claim

- All documents relating to carriage or requests for carriage of the video programming at issue in the complaint by the defendant MVPD;
- All documents relating to the defendant MVPD's interest in obtaining or plan to obtain a financial interest in the complainant or the video programming at issue in the complaint; and
- All documents relating to the programming vendor's consideration of whether to provide the defendant MVPD with a financial interest in the complainant or the video programming at issue in the complaint.

Exclusivity Claim

- All documents relating to carriage or requests for carriage of the video programming at issue in the complaint by the defendant MVPD;

[8] As discussed above, after finding that the complainant has established a *prima facie* case, the Media Bureau could rule on the merits of a complaint based on the pleadings without discovery. *See Second Report and Order* in MB Docket No. 07–42, para. 21. The deadlines related to discovery discussed here would be triggered only if the Media Bureau's decision finding that the complainant has established a *prima facie* case states that the Media Bureau will issue a ruling on the merits of the complaint after discovery.

[9] *See* 47 CFR 76.7(e)(3) (stating that the Commission may, in its discretion, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence).

[10] *See 1990 Comparative Hearing Order*, 5 FCC Rcd 157, para. 25; *see also id.* at para. 27 (''With the early provision of the information required in the standardized document production order and the uniform integration statement, we would expect that the remainder of the discovery process could be expedited.'').

[11] As discussed above, after finding that the complainant has established a *prima facie* case, the Media Bureau might rule on the merits of a complaint based on the pleadings without discovery. *See Second Report and Order* in MB Docket No. 07–42, para. 21. The deadlines related to automatic document production discussed here would be triggered only if the Media Bureau's decision finding that the complainant has established a *prima facie* case states that the Media Bureau will issue a ruling on the merits of the complaint after discovery.

• All documents relating to the defendant MVPD's interest in obtaining or plan to obtain exclusive rights to the video programming at issue in the complaint; and

• All documents relating to the programming vendor's consideration of whether to provide the defendant MVPD with exclusive rights to the video programming at issue in the complaint.

Discrimination Claim

• All documents relating to the defendant MVPD's carriage decision with respect to the complainant's video programming at issue in the complaint, including (i) the defendant MVPD's reasons for not carrying the video programming or the defendant MVPD's reasons for proposing, rejecting, or accepting specific carriage terms; and (ii) the defendant MVPD's evaluation of the video programming;

• All documents comparing, discussing the similarities or differences between, or discussing the extent of competition between the complainant's video programming at issue in the complaint and the allegedly similarly situated, affiliated video programming, including in terms of genre, ratings, license fee, target audience, target advertisers, and target programming;

• All documents relating to the impact of defendant MVPD's carriage decision on the ability of the complainant, the complainant's video programming at issue in the complaint, the defendant MVPD, and the allegedly similarly situated, affiliated video programming to compete, including the impact on (i) subscribership; (ii) license fee revenues; (iii) advertising revenues; (iv) acquisition of advertisers; and (v) acquisition of programming rights;

• For the complainant's video programming at issue in the complaint and the allegedly similarly situated, affiliated video programming, all documents (both internal documents as well as documents received from MVPDs, but limited to the ten largest MVPDs in terms of subscribers with which the complainant or the affiliated programming vendor have engaged in carriage discussions regarding the video programming) discussing the reasons for the MVPD's carriage decisions with respect to the video programming, including (i) the MVPD's reasons for not carrying the video programming or the MVPD's reasons for proposing, rejecting, or accepting specific carriage terms; and (ii) the MVPD's evaluation of the video programming; and

• For the complainant's video programming at issue in the complaint and the allegedly similarly situated, affiliated video programming, current affiliation agreements with the ten largest MVPDs (including, if not otherwise covered, the defendant MVPD) carrying the video programming in terms of subscribers.

11. Should our rules limit the automatic production of documents to those generated or received after a certain date, such as within three years prior to the complaint? Should our rules require the parties to establish a privilege log describing the documents that have been withheld along with support for any claim of privilege? Should we specify in our rules that the Media Bureau has the discretion to add or remove documents from this automatic production list based on the specific facts of a case when issuing its *prima facie* decision? Rather than specifying a list of documents in our rules, should we instead require the Media Bureau when issuing a *prima facie* decision to order the production of documents based on the specific facts of the case? Will this eliminate the benefits of advanced notice discussed above?

3. Protective Orders

12. We note that one source of delay in the discovery process is the need for the parties to negotiate and obtain approval of a protective order before producing confidential information. For program access cases, we have established a standard protective order and declaration.[12] While parties to program access cases are free to negotiate their own protective order, they may also rely upon this standard protective order. We seek comment on whether the program access protective order is sufficiently stringent to ensure that confidential information is not improperly used for competitive business purposes, or whether we should adopt a more stringent standard protective order for program carriage cases. To the extent commenters have specific concerns with using the program access standard protective order and declaration for program carriage cases, we ask that they propose specific changes and an explanation of their reason for their proposed changes.[13] If parties to a program carriage complaint are unable to mutually agree to their own protective order prior to the ten-day automatic production deadline discussed above, should the parties be deemed to have agreed to the standard protective order, thereby allowing document production to proceed? To the extent that the automatic document production list or discovery in general requires production of documents, such as programming contracts, that require third-party consent before disclosure, does the standard protective order address reasonable concerns commonly expressed by third parties or should specific provisions be added to address those concerns? Are there any other actions we can take to prevent third-party consent requirements from delaying the completion of discovery?

4. Use of Discovery Procedures in Program Carriage Cases Referred to an ALJ

13. We also seek comment on the extent to which any of the discovery proposals outlined above should apply to program carriage complaints referred to an ALJ. As an initial matter, we note that cases referred to an ALJ generally involve a hearing, which raises additional complexities not applicable to cases handled by the Media Bureau. Moreover, our rules set forth specific discovery procedures applicable to adjudicatory proceedings conducted before an ALJ and also provide the ALJ with authority to ''[r]egulate the course of the hearing.'' Nonetheless, we seek comment as to whether and how the discovery deadlines suggested above, the automatic document production lists, or the model protective order might be used in conjunction with program carriage complaints referred to an ALJ.

C. Damages

14. We propose to adopt rules allowing for the award of damages for violations of the program carriage rules that are identical to those adopted for program access cases. Section 616(a)(5) of the Act directs the Commission to adopt regulations that ''provide for appropriate penalties and remedies for violations of [section 616], including carriage.'' Although the program carriage statute does not explicitly direct the Commission to allow for the award of damages as a remedy for a program carriage violation, the statute does require the Commission to adopt ''appropriate * * * remedies.''[14] The

[12] *See* 47 CFR 76.1003(k); *2007 Program Access Order,* 22 FCC Rcd at 17853–55, paras. 100–103 and Appendix E, 17894–99.

[13] We note that a Petition for Reconsideration of the *2007 Program Access Order* is pending that argues that the standard protective order should include a mechanism whereby a party can object to a specific individual seeking access to confidential information; should allow only outside counsel to access certain information; and should provide the parties with the right to prohibit copying of highly sensitive documents. *See* Fox Entertainment Group, Inc., Petition for Reconsideration, MB Docket No. 07–29 (Nov. 5, 2007), at 8–10.

[14] In the *1993 Program Carriage Order,* the Commission stated that it would ''determine the appropriate relief for program carriage violations on

Commission has interpreted this same term as used in the program access statute [15] as broad enough to include a remedy of damages, stating that:

Although petitioners are correct that the statute does not expressly use the term ''damages,'' it does expressly empower the Commission to order ''appropriate remedies.'' Because the statute does not limit the Commission's authority to determine what is an appropriate remedy, and damages are clearly a form of remedy, the plain language of this part of section 628(e) is consistent with a finding that the Commission has authority to afford relief in the form of damages.[16]

We seek comment on whether the Commission has authority to award damages in program carriage cases under the same analysis.

15. We believe that allowing for the award of damages would be useful in deterring program carriage violations and promoting settlement of any disputes. We seek comment on this view. If we adopt rules allowing for the award of damages in program carriage cases, we propose to apply the same policies that apply in program access cases. In the program access context, the Commission has stated that damages would not promote competition or otherwise benefit the video marketplace in cases where a defendant relies upon a good faith interpretation of an ambiguous aspect of our rules for which there is no guidance. Conversely, the Commission has explained that damages are appropriate when a defendant knew or should have known that its conduct would violate the rules. We request comment on this approach. In addition, consistent with our program access rules, we propose to adopt rules allowing for the award of compensatory damages in program carriage cases. We do not propose to allow for awards of attorney's fees. We seek comment on whether the Commission has legal authority to make awards of punitive damages. Section 616(a)(5) of the Act directs the Commission to adopt regulations that ''provide for appropriate penalties.'' Courts have recognized that ''penalties'' may take various forms, including punitive damages, fines, and statutory penalties, all of which are aimed at deterring wrongful conduct. We note, however, that the Commission previously declined to allow for the award of punitive damages in program access cases.[17] We seek comment on whether there is any basis for awarding punitive damages in program carriage cases but not in program access cases. To what extent would the potential award of punitive damages help to deter program carriage violations and promote settlement of any disputes?

16. We note that the Commission has also adopted specific procedures for requesting and awarding damages in program access cases. We propose to apply these same procedures to the award of damages in the program carriage context. While we briefly summarize some of these procedures here, we encourage commenters to review these procedures in their entirety as set forth in § 76.1003(d) and 76.1003(h)(3) of the Commission's rules and the *1998 Program Access Order* to determine whether they are appropriate for program carriage cases. Under the program access rules, a complainant seeking damages must provide in its complaint either (i) a detailed computation of damages (the ''damages calculation''); or (ii) an explanation of the information that is not in its possession and needed to compute damages, why such information is unavailable to the complainant, the factual basis the complainant has for believing that such evidence of damages exists, and a detailed outline of the methodology that would be used to compute damages with such evidence (the ''damages computation methodology''). The burden of proof regarding damages rests with the complainant. The procedures provide for the bifurcation of the program access violation determination from the damages determination. In ruling on whether there has been a program access violation, the Media Bureau is required to indicate in its decision whether damages are appropriate. The Commission's aspirational deadline for resolving the program access complaint applies solely to the program access violation determination and not to the damages determination. The Commission has explained that the appropriate date from which damages accrue is the date on which the violation first occurred, and that the burden is on the complainant to establish this date. Moreover, based on the one-year limitations period for bringing program access complaints, the Commission has explained that it will not entertain damages claims asserting injury pre-dating the complaint by more than one year. In cases in which the complainant has submitted a damages calculation and the Media Bureau approves or modifies the calculation, the defendant is required to compensate the complainant as directed in the Media Bureau's order. In cases in which the complainant has submitted a damages computation methodology and the Media Bureau approves or modifies the methodology, the parties are required to negotiate in good faith to reach an agreement on the exact amount of damages pursuant to the methodology. We seek comment on the appropriateness of adopting similar rules in the program carriage context.

17. We also propose to adopt similar procedures for requesting the application of new prices, terms, and conditions in the event an adjudicator

a case-by-case basis'' and that available remedies and sanctions ''include forfeitures, mandatory carriage, or carriage on terms revised or specified by the Commission,'' but did not explicitly include or exclude damages. *1993 Program Carriage Order,* 9 FCC Rcd at 2653, para. 26.

[15] 47 U.S.C. 548(e)(1) (''Upon completion of such adjudicatory proceeding, the Commission shall have the power to order *appropriate remedies,* including, if necessary, the power to establish prices, terms, and conditions of sale of programming to the aggrieved multichannel video programming distributor.'') (emphasis added). Although the Commission initially concluded that it did not have authority to assess damages in program access cases, it later reversed that decision. *Compare Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992: Development of Competition and Diversity in Video Programming Distribution and Carriage,* First Report and Order, 8 FCC Rcd 3359, 3392, para. 81 (1993) (''*1993 Program Access Order*'') *with Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992: Development of Competition and Diversity in Video Programming Distribution and Carriage,* Memorandum Opinion and Order on Reconsideration of the First Report and Order, 10 FCC Rcd 1902, 1910–11, para. 17 (1994) (''*1994 Program Access Reconsideration Order*'').

[16] *See 1994 Program Access Reconsideration Order,* 10 FCC Rcd at 1910–11, para. 17; *see also 1998 Program Access Order,* 13 FCC Rcd at 15831–32, paras. 14–15 (reaffirming the Commission's statutory authority to award damages in program access cases). Although the Commission held that it had authority to award damages in program access cases, it initially elected not to exercise that authority, finding that other sanctions available to the Commission were sufficient to deter entities from violating the program access rules. *See 1994 Program Access Reconsideration Order,* 10 FCC Rcd at 1911, para. 18. The Commission later adopted rules allowing for the award of damages in program access cases, stating that ''[r]estitution in the form of damages is an appropriate remedy to return improper gains.'' *1998 Program Access Order,* 13 FCC Rcd at 15833, para. 17. We note that the Commission has held that section 325(b)(3)(C) of the Act pertaining to retransmission consent negotiations, which does not contain the same ''appropriate remedies'' language, does not authorize the award of damages. *See Implementation of the Satellite Home Viewer Improvement Act of 1999; Retransmission Consent Issues: Good Faith Negotiation and Exclusivity,* First Report and Order, 15 FCC Rcd 5445, 5480, para. 82 (2000) (''We can divine no intent in section 325(b)(3)(C) to impose damages for violations thereof * * *. Commenters' reliance on the program access provisions as support for a damages remedy in this context is misplaced. The Commission's authority to impose damages for program access violations is based upon a statutory grant of authority.'').

[17] The Commission based its decision to decline to allow for the award of punitive damages in program access cases based on a lack of record evidence regarding the need for this type of damages. *See 1998 Program Access Order,* 13 FCC Rcd at 15834, para. 21.

reaches a decision on the merits of a program carriage complaint after the Media Bureau issues a standstill order. In the *Second Report and Order* in MB Docket No. 07–42, we adopted specific procedures for the Media Bureau's consideration of requests for a temporary standstill of the price, terms, and other conditions of an existing programming contract by a program carriage complainant seeking renewal of such a contract. If the Media Bureau grants the temporary standstill, the rules adopted provide that the adjudicator ruling on the merits of the complaint will apply the terms of the new agreement between the parties, if any, as of the expiration date of the previous agreement. We noted that application of new terms may be difficult in some cases, such as if carriage of the video programming has continued uninterrupted during resolution of the complaint as a result of the Media Bureau's standstill order, but the decision on the merits provides that the defendant MVPD may discontinue carriage. While we believe the adjudicator can address these issues on a case-by-case basis in the absence of a new rule on this point, adoption of specific procedures addressing compensation of the parties during the standstill period, if any, may facilitate the expeditious resolution of these issues. For example, should a defendant MVPD that ultimately prevails on the merits nonetheless be required to pay for carriage during the standstill period? Should we assume that the previously negotiated carriage fees reflected in the parties' expired agreement represent reasonable compensation for the carriage of the programming during the standstill period? We propose to adopt procedures similar to those set forth above for requesting damages. Specifically, in the event the Media Bureau has issued a standstill order, the adjudicator after reaching a decision on the merits may request the prevailing party to submit either (i) a detailed computation of the fees and/or compensation it believes it is owed during the standstill period based on the new prices, terms, and conditions ordered by the adjudicator (the ''true-up calculation''); or (ii) a detailed outline of the methodology used to calculate the fees and/or compensation it believes it is owed during the standstill period based on the new prices, terms, and conditions ordered by the adjudicator (the ''true-up computation methodology''). The burden of proof would rest with the party seeking compensation during the standstill period based on the new prices, terms, and conditions. In cases in which the adjudicator approves or modifies a prevailing party's true-up calculation, the opposing party would be required to compensate the prevailing party as directed in the adjudicator's order. In cases in which the adjudicator approves or modifies a true-up computation methodology, the parties would be required to negotiate in good faith to reach an agreement on the exact amount of compensation pursuant to the methodology. We seek comment on this approach.

D. Submission of Final Offers

18. Among the remedies an adjudicator can order for a program carriage violation is the establishment of prices, terms, and conditions for the carriage of a complainant's video programming.[18] To the extent that the adjudicator orders this remedy, we propose to adopt a rule providing that the adjudicator will have the discretion to order each party to submit their ''final offer'' for the rates, terms, and conditions for the video programming at issue.[19] In previous merger orders, the Commission has explained that requiring parties to a programming dispute to submit their final offer for carriage and requiring the adjudicator to select the offer that most closely approximates fair market value ''has the attractive 'ability to induce two sides to reach their own agreement, lest they risk the possibility that a relatively extreme offer of the other side may be selected * * *.' '' We seek comment on the extent to which providing the adjudicator with the discretion to require the parties to submit final offers will encourage the parties to resolve their differences through settlement and will assist the adjudicator in crafting an appropriate remedy should the parties not settle their dispute.[20] We also seek comment on whether submission of final offers will enable the adjudicator to reach a more expeditious resolution of the complaint.

19. To the extent the adjudicator requests the submission of final offers, we seek comment on whether the adjudicator should be required to select one of the parties' final offers as the remedy or whether the adjudicator should have the discretion to craft a remedy that combines elements of both final offers or contains other terms that the adjudicator finds to be appropriate. While requiring the adjudicator to select one of the final offers might be more effective in encouraging the parties to submit reasonable offers and promoting a settlement, we expect that providing the adjudicator with the discretion to craft a remedy combining elements of both final offers (*e.g.,* the rate in one offer and the contract term in the other offer) or other terms that the adjudicator finds to be appropriate will provide greater flexibility, possibly resulting in a more appropriate remedy. We seek comment on the ramifications of each approach. We also seek comment on when the adjudicator should solicit final offers to the extent the adjudicator exercises the discretion to do so. As in the case of damages discussed above, should the adjudicator bifurcate the program carriage violation determination from the remedy phase to facilitate the submission of final offers, similar to the way damages are handled in program access cases?

E. Mandatory Carriage Remedy

20. The program carriage rules provide that the remedy ordered by the Media Bureau or ALJ is effective upon release of the decision, except when the adjudicator orders mandatory carriage that will require the defendant MVPD to ''delete existing programming from its system to accommodate carriage'' of a programming vendor's video programming.[21] In such a case, if the defendant MVPD seeks Commission review of the decision, the mandatory carriage remedy does not take effect unless and until the decision is upheld by the Commission. If the Commission upholds in its entirety the relief granted by the adjudicator, the defendant MVPD is required to carry the video programming at issue in the complaint for an additional time period beyond that originally ordered by the

[18] *See* 47 CFR 76.1302(g)(1); *1993 Program Carriage Order,* 9 FCC Rcd at 2653, para. 26 (''Available remedies and sanctions include forfeitures, mandatory carriage, or carriage on terms revised or specified by the Commission.''). This rule will now appear at § 76.1302(j)(1) once the amendments adopted in the *Second Report and Order* in MB Docket No. 07–42 take effect.

[19] *See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services,* Second Report and Order, FCC 11–52, para. 79 (2011) (stating that, when considering the commercial reasonableness of the terms and conditions of a proffered data roaming arrangement, the Commission staff may, in resolving such a claim, require both parties to provide to the Commission their best and final offers that were presented during the negotiation).

[20] *See* Comcast Reply at 34 n.116 (noting practical concerns with a mandatory carriage remedy).

[21] *See* 47 CFR 76.1302(g)(1); *1993 Program Carriage Order,* 9 FCC Rcd at 2656, para. 33 (discussing mandatory carriage remedy in cases ruled on by Media Bureau); *id.* at 2656, para. 34 (discussing mandatory carriage remedy in cases ruled on by ALJ). This rule will now appear at § 76.1302(j)(1) once the amendments adopted in the *Second Report and Order* in MB Docket No. 07–42 take effect.

adjudicator, equal to the amount of time that elapsed between the adjudicator's decision and the Commission's final decision, on the terms ordered by the adjudicator and upheld by the Commission. One potential benefit of this rule is that it ensures that consumers do not lose programming carried by their MVPD in the event a Media Bureau or ALJ decision granting carriage is ultimately overturned by the Commission.

21. As an initial matter, we seek comment on the need for this rule. We note that any party can seek a stay of a Media Bureau or ALJ decision while a review is pending before the Commission.[22] Is it necessary to have a rule specific to program carriage complaints that allows only the defendant MVPD to avoid the need to seek a stay? Should a similar rule apply if a programming vendor's video programming will be deleted from the defendant MVPD's system as a result of a Media Bureau or ALJ decision, thereby resulting in lost video programming for consumers? For example, if the Media Bureau grants a standstill for a complainant programming vendor seeking renewal of an existing contract but the adjudicator rules on the merits that the defendant MVPD's decision to delete the video programming does not violate the program carriage rules, should that ruling take effect only if the decision is upheld by the Commission?

22. To the extent that we retain § 76.1302(g)(1), we are concerned that the rule is unclear with respect to the type of showing a defendant MVPD must make to satisfy the rule and thereby delay the effectiveness of the remedy. We propose to amend this rule to clarify that the defendant MVPD must make a sufficient evidentiary showing to the adjudicator demonstrating that it would be required to delete existing programming to accommodate the video programming at issue in the complaint. As in the case of damages and submission of final offers discussed above, should the adjudicator bifurcate the program carriage violation determination from the remedy phase to allow for the defendant MVPD's evidentiary showing on this issue?

23. We also seek comment on whether we should clarify what ''deletion'' of existing programming means in this context. For example, if the mandatory carriage remedy forces the defendant MVPD to move existing programming to a less-penetrated tier but does not force the defendant MVPD to remove the programming from its channel line-up entirely, should that be considered ''deletion'' of existing programming? While we expect that an adjudicator can resolve such issues on a case-by-case basis,[23] should we provide specific guidance in our rules as to what constitutes ''deletion''? Would providing guidance on this issue avoid the need for the adjudicator to make a case-by-case determination and thereby lead to a more expeditious and consistent resolution of program carriage complaints?

F. Retaliation

24. Programming vendors have expressed concern that MVPDs will retaliate against them for filling program carriage complaints. They state that the fear of retaliation is preventing programming vendors from filing legitimate program carriage complaints. As an initial matter, we note that the standstill procedure we adopt in the *Second Report and Order* in MB Docket No. 07–42 will help to prevent retaliation in part while a program carriage complaint is pending. If granted, the standstill will keep in place the price, terms, and other conditions of an existing programming contract during the pendency of the complaint, thus preventing the defendant MVPD from taking adverse action during this time against the programming vendor with respect to the video programming at issue in the complaint. We seek comment on whether there are any circumstances in the program carriage context in which the Commission's authority to issue temporary standstill orders is statutorily or otherwise limited.[24]

25. Programming vendors' concerns regarding retaliation, however, extend beyond the period while a complaint is pending and beyond the particular programming that is the subject of the complaint. They fear that an MVPD will seek to punish a programming vendor for availing itself of the program carriage rules after the complaint has been resolved. Another potential form of retaliation could impact programming vendors owning more than one video programming network. For example, if a programming vendor owning more than one video programming network brings a program carriage complaint involving one particular video programming network, the defendant MVPD could potentially take a retaliatory adverse carriage action involving another video programming network owned by the programming vendor.

26. We seek comment on the extent to which retaliation has occurred in the past. We note that eleven program carriage complaints have been filed since the Commission adopted its program carriage rules in 1993. Have any of the complainants experienced retaliation by MVPDs? Have any other programming vendors experienced retaliation by MVPDs for merely suggesting that they might avail themselves of the program carriage rules? We note that examples of actual retaliation or threats of retaliation will assist in developing a record on whether and how to address concerns regarding retaliation.

27. We also seek comment on what measures the Commission should take to address retaliation. As an initial matter, we believe that retaliation may be addressed in some cases through a program carriage complaint alleging discrimination on the basis of affiliation. For example, if an MVPD takes an adverse carriage action against a programming vendor after the vendor files a complaint, the programming vendor may have a legitimate discrimination complaint if it can establish a *prima facie* case of discrimination on the basis of affiliation, such as by showing that the defendant MVPD treated its similarly situated, affiliated video programming differently.[25] If the case proceeds to the

[22] *See Brunson Commc'ns, Inc.* v. *RCN Telecom. Servs. Inc.,* Memorandum Opinion and Order, 15 FCC Rcd 12883 (CSB 2000) (granting stay request pending action on Application for Review); *see also* 47 CFR 76.10(c)(2). To obtain a stay, a petitioner must demonstrate that (i) it is likely to prevail on the merits; (ii) it will suffer irreparable harm absent a stay; (iii) grant of a stay will not substantially harm other interested parties; and (iv) the public interest favors grant of a stay. *See, e.g., Virginia Petroleum Jobbers Ass'n* v. *FPC,* 259 F.2d 921, 925 (DC Cir. 1958); *see also Washington Metropolitan Area Transit Comm'n* v. *Holiday Tours,* 559 F.2d 841 (DC Cir. 1977) (clarifying the standard set forth in *Virginia Petroleum Jobbers Ass'n* v. *FPC*); *Hispanic Information and Telecomm. Network, Inc.,* 20 FCC Rcd 5471, 5480, para. 26 (2005) (affirming Bureau's denial of request for stay on grounds applicant failed to establish four criteria demonstrating stay is warranted).

[23] *See Tennis Channel HDO,* 25 FCC Rcd at 14163, para. 24 n.120 (directing the ALJ to determine whether a remedy requiring a defendant MVPD to carry the complainant programming vendor's video programming on a specific tier or to a specific number or percentage of subscribers would ''require [the defendant MVPD] to delete existing programming from its system to accommodate carriage of'' the complainant programming vendor's video programming).

[24] *See* NCTA July 1 2011 *Ex Parte* Letter at 1 (*citing* 47 U.S.C. 544(f)(1)). *But see United Video, Inc.* v. *FCC,* 890 F.2d 1173, 1189 (DC Cir. 1989) (''The House report [to section 624(f)] suggests that Congress thought a cable company's owners, not government officials, should decide what sorts of programming the company would provide. But it does not suggest a concern with regulations of cable that are not based on the content of cable programming, and do not require that particular programs or types of programs be provided.'').

[25] *See Second Report and Order* in MB Docket No. 07–42, para. 14 (discussing evidence required to establish a *prima face* case of a violation of the

Continued

merits, the defendant MVPD obviously could not defend its action by claiming it was motivated by a desire to retaliate against the programming vendor.

28. Addressing retaliation through a discrimination complaint, however, is not useful in cases where the defendant MVPD takes retaliatory action with respect to video programming affiliated with the complainant programming vendor that is not similarly situated to video programming affiliated with the defendant MVPD. For example, a programming vendor owning an RSN may bring a complaint alleging that the defendant MVPD engaged in discrimination on the basis of affiliation by refusing to carry the RSN. The defendant MVPD could potentially retaliate by refusing to carry a news channel affiliated with the complainant programming vendor. To the extent the defendant MVPD is not affiliated with a news channel, however, the programming vendor would be unable to establish a *prima facie* case of discrimination on the basis of affiliation by showing that the defendant MVPD treated its own affiliated news channel differently. To address this concern, we seek comment on whether we should adopt a new rule prohibiting an MVPD from taking an adverse carriage action against a programming vendor because the programming vendor availed itself of the program carriage rules. The adverse carriage action could involve any video programming owned by or affiliated with the complainant programming vendor, not just the particular video programming subject to the initial complaint that triggered the retaliatory action. To the extent we adopt the automatic document production process described above, we seek comment on what documents might be considered sufficiently relevant to a retaliation claim to include in the automatic document production list.

29. We seek comment on the extent of our authority to adopt an anti-retaliation provision in light of the fact that this program carriage practice is not explicitly mentioned in section 616. We note that section 616 contains broad language directing the Commission to ''establish regulations governing program carriage agreements and related practices between cable operators or other [MVPDs] and video programming vendors'' and then lists six specific requirements that the Commission's program carriage regulations ''shall provide for,'' ''shall contain,'' or ''shall include.'' While there is no specific statutory provision prohibiting MVPDs from retaliating against programming vendors for filing complaints, the statute does not preclude the Commission from adopting additional requirements beyond the six listed in the statute. Thus, we believe that we have authority to adopt a rule prohibiting retaliatory carriage practices. We seek comment on this interpretation. To the extent any new substantive program carriage requirement must be based on one of the six requirements listed in the statute, does the discrimination provision in section 616(a)(3) provide the statutory basis for an anti-retaliation rule? For example, we foresee that only a programming vendor that is unaffiliated with the defendant MVPD would bring a program carriage complaint against that MVPD; thus, absent such non-affiliation, a complaint would not have been filed and the MVPD would have no basis to retaliate. Thus, does an MVPD's decision to take a retaliatory adverse carriage action against a programming vendor specifically because the programming vendor availed itself of the program carriage rules amount to ''discrimination on the basis of affiliation or non-affiliation''? To the extent our authority to address retaliation is based on the discrimination provision in section 616(a)(3), would the complainant also need to establish that the retaliatory adverse carriage action ''unreasonably restrain[ed] the ability of [the programming vendor] to compete fairly''? Does this limit the practical effect of the anti-retaliation provision by authorizing MVPDs to take retaliatory actions that fall short of an unreasonable restraint on the programming vendor's ability to compete fairly?

30. We seek comment on the practical impact of an anti-retaliation provision given that acts of retaliation are unlikely to be overt. That is, while an MVPD could potentially take a retaliatory adverse carriage action against a programming vendor following the filing of a complaint, it is highly doubtful that the defendant MVPD will inform the programming vendor that its action was motivated by retaliation. We seek comment on how programming vendors could bring legitimate retaliation complaints in the absence of direct evidence of retaliation. For example, should we establish as a *prima facie* violation of the anti-retaliation rule any adverse carriage action taken by a defendant MVPD against a complainant programming vendor (other than the action at issue in the initial program carriage complaint) that occurs while a program carriage complaint is pending or within two years after the complaint is resolved on the merits? We seek comment on whether two years would be the appropriate time period. In establishing this time period, we seek to capture the period during which the defendant MVPD can reasonably be expected to have an incentive to retaliate while at the same time ensuring that we do not unduly hinder the defendant MVPD's legitimate carriage decisions with respect to the complainant programming vendor.

31. As discussed above, a finding of a *prima facie* violation does not resolve the merits of the case nor does it mean that the defendant has violated the Commission's rules. Rather, it means that the complainant has alleged sufficient facts that, if left unrebutted, may establish a violation of the program carriage rules and thus parties may proceed to discovery (if necessary) and a decision on the merits. We do not believe that an anti-retaliation rule should apply to the defendant MVPD's action at issue in the initial program carriage complaint. For example, if the action at issue in the initial program carriage complaint involves the defendant MVPD's decision not to renew a contract for the complainant programming vendor's RSN and a standstill has not been granted, the action of the defendant MVPD to delete the RSN while the complaint is pending would not be a *prima facie* violation of the anti-retaliation rule. If, however, the defendant MVPD proceeds to move the complainant programming vendor's news channel to a less-penetrated tier after the filing of a complaint pertaining to an RSN, this may establish a *prima facie* violation under this rule. We seek comment on the extent to which such a rule would encourage the filing of frivolous program carriage complaints by programming vendors hoping to take advantage of the anti-retaliation rule to prevent MVPDs from taking adverse carriage actions based on legitimate business concerns. As set forth above, the rule would apply to adverse carriage actions while a complaint is pending or within two years after the complaint is resolved on the merits. A frivolous complaint would likely be dismissed at the *prima facie* stage, which the Media Bureau must resolve within no more than approximately 140 days after the complaint is filed.[26] Will this limited

discrimination provision). The complaint must also contain evidence that the defendant MVPD's conduct has the effect of unreasonably restraining the ability of the complainant programming vendor to compete fairly. *See Second Report and Order* in MB Docket No. 07–42, para. 15.

[26] *See Second Report and Order* in MB Docket No. 07–42, para. 20 (requiring the Media Bureau to release a *prima facie* determination within 60

time period, along with our existing prohibition on frivolous complaints, deter the filing of frivolous complaints intended to wrongly invoke the anti-retaliation rule as a shield against legitimate MVPD business decisions?

G. Good Faith Negotiation Requirement

32. We seek comment on whether to adopt a rule requiring vertically integrated MVPDs to negotiate in good faith with an unaffiliated programming vendor with respect to video programming that is similarly situated to video programming affiliated with the MVPD (or with another MVPD [27]). Some programming vendors claim that MVPDs do not overtly deny requests for carriage; rather, they claim that MVPDs effectively deny carriage and harm programming vendors in more subtle forms, such as failing to respond to carriage requests in a timely manner, simply ignoring requests to negotiate for carriage, making knowingly inadequate counter-offers, or failing to engage in renewal negotiations until just prior to the expiration of an existing agreement.[28] We seek comment on the extent to which these concerns are legitimate and widespread and whether they would be addressed through the explicit good faith negotiation requirement described here for vertically integrated MVPDs.[29]

33. We note two important limitations on this good faith requirement. First, we are not aware of concerns regarding the negotiating tactics of non-vertically integrated MVPDs with respect to unaffiliated programming vendors. Accordingly, we believe it is appropriate to limit a good faith negotiation requirement to vertically integrated MVPDs only.[30] Second, we believe that this good faith requirement should extend only to negotiations involving video programming that is similarly situated to video programming affiliated with the MVPD (or with another MVPD). That is, to the extent that a vertically integrated MVPD is engaged in negotiations with an unaffiliated programming vendor involving video programming that is not similarly situated to video programming affiliated with the MVPD (or with another MVPD), there would appear to be no basis to assume that the MVPD would seek to favor its own video programming (or video programming affiliated with another MVPD) over the unaffiliated programming vendor's video programming on the basis of ''affiliation'' as opposed to legitimate business reasons. We seek comment on these views. Is this approach workable given that the concept of ''similarly situated'' is a subjective standard? That is, will an MVPD that does not want to carry the video programming simply claim that it does not have to negotiate because the video programming is not ''similarly situated,'' leaving the programming vendor with claims for both discrimination and failure to negotiate in good faith, but not materially better off than if it just had the discrimination claim? Will this requirement encourage vertically integrated MVPDs to negotiate in good faith with both similarly situated and non-similarly situated video programming to avoid violating the good faith requirement? Will such a requirement unreasonably interfere with negotiations and limit the ability of vertically integrated MVPDs to pursue legitimate negotiation tactics?

34. We also seek comment on the extent of our authority to adopt this explicit good faith negotiation requirement for vertically integrated MVPDs in the program carriage context. As discussed above, we seek comment on the extent of our authority to adopt a new substantive program carriage rule, such as a good faith requirement, considering that this requirement is not explicitly mentioned in section 616. Does the general grant of rulemaking authority under section 616 provide a sufficient statutory basis for adopting this requirement? To the extent any new substantive program carriage requirement must be based on one of the six requirements listed in the statute, does the discrimination provision in section 616(a)(3) provide statutory authority for a good faith negotiation requirement? Allegations that a vertically integrated MVPD has not negotiated in good faith could form the basis of a legitimate program carriage discrimination complaint. For example, to the extent that a vertically integrated MVPD carries affiliated video programming but refuses to engage in or needlessly delays negotiations with a programming vendor with respect to similarly situated, unaffiliated video programming, this may reflect discrimination on the basis of affiliation. To the extent that such a claim could already be addressed through a discrimination complaint, is it necessary to codify the requirement described above that vertically integrated MVPDs negotiate in good faith? Would codifying this requirement nonetheless provide guidance to programming vendors and vertically integrated MVPDs alike that action or inaction by a vertically integrated MVPD that effectively amounts to a denial of carriage is cognizable under the program carriage rules as a form of discrimination on the basis of affiliation? To the extent that our authority to adopt the good faith negotiation requirement described above would be based on the discrimination provision in section 616(a)(3), would the complainant also need to establish that the adverse carriage action ''unreasonably restrain[ed] the ability of [the programming vendor] to compete fairly''? Does this limit the practical effect of a good faith negotiation requirement by authorizing vertically integrated MVPDs to engage in bad faith tactics that fall short of an unreasonable restraint on the programming vendor's ability to compete fairly? To the extent we adopt the automatic document production process described above, we seek comment on what documents might be considered sufficiently relevant to a good faith claim to include

calendar days after the close of the 80-calendar-day pleading cycle on a program carriage complaint).

[27] As discussed below, we seek comment on whether MVPDs favor not only their own affiliated programming vendors but also programming vendors affiliated with other MVPDs. *See infra* paras. 36–42. To the extent this is the case, we seek comment below on whether a vertically integrated MVPD must negotiate in good faith with an unaffiliated programming vendor with respect to video programming that is similarly situated to video programming affiliated with the MVPD or with another MVPD. *See infra* para. 41.

[28] *See* BTNC Comments at 11–12; Outdoor Channel Nov. 16, 2007 *Ex Parte* Letter at 1 (stating that MVPD-imposed negotiating delays after a prior contract has expired put programmers in the position of having to accept uncertain, month-to-month carriage arrangements that makes it difficult to invest in content); Hallmark Channel Nov. 20 *Ex Parte* Letter at 1 (''[S]ome MVPDs frequently fail to make carriage offers or respond to an independent programmer's offers until just before an existing agreement is set to expire, effectively turning post-expiration carriage into a month-to-month proposition.''); *see id.* (stating that some MVPDs make ''knowingly inadequate offers that give the superficial appearance of good faith negotiation but that are not intended or expected to be accepted, let alone thought responsive to the programmers' offers'' and that such practices undercut the ability of the programmer to attract investors).

[29] *See* NFL Enterprises Comments at 7 (urging the Commission to impose ''on MVPDs the same duty to bargain in good faith that currently applies to their retransmission consent negotiations with broadcasters'').

[30] *See* Letter from American Cable Association *et al.* to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07–42 (Dec. 10, 2008) at 2 (stating that non-vertically integrated operators do not have any incentive to engage in conduct that would unreasonably restrain the ability of independent programmers to compete that would warrant changing existing rules to allow programmers to file discrimination or good faith complaints against them); Letter from John D. Goodman, Broadband Service Providers Association, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07–42 (Dec. 9, 2008) at 2–3 (stating that non-vertically integrated operators have ''no history of discriminating against independent programmers, nor have any incentive or ability to do so'').

in the automatic document production list.

35. To the extent we adopt the explicit good faith negotiation requirement for vertically integrated MVPDs described above, should we establish specific guidelines for assessing good faith negotiations? For example, in the retransmission consent context, the Commission has established seven objective good faith negotiation standards, the violation of which is considered a *per se* violation of the good faith negotiation obligation.[31] Should the Commission consider the same standards to determine whether a vertically integrated MVPD has negotiated in good faith in the program carriage context? Moreover, in the retransmission consent context, even if the seven standards are met, the Commission may consider whether, based on the totality of the circumstances, a party failed to negotiate retransmission consent in good faith.[32] Should a similar policy apply to vertically integrated MVPDs in the program carriage context?

H. Scope of the Discrimination Provision

36. In the *1993 Program Carriage Order,* the Commission interpreted the discrimination provision in section 616(a)(3) to require a complainant alleging discrimination that favors an ''affiliated'' programming vendor to provide evidence that the defendant MVPD has an attributable interest in the allegedly favored ''affiliated'' programming vendor.[33] Commenters, however, have claimed that vertically integrated MVPDs favor not only their own affiliated programming vendors but also programming vendors affiliated with other MVPDs.[34] For example, vertically integrated MVPD A might treat a news channel affiliated with MVPD B more favorably than an unaffiliated news channel in exchange for MVPD B's reciprocal favorable treatment of MVPD A's affiliated sports channel. In this case, the unaffiliated news channel would be unable to provide evidence that the defendant MVPD (MVPD A) has an attributable interest in the allegedly favored programming vendor (the news channel affiliated with MVPD B) as required under the *1993 Program Carriage Order.* We seek comment on whether we should address such situations by interpreting the discrimination provision in section 616(a)(3) more broadly to preclude a vertically integrated MVPD from discriminating on the basis of a programming vendor's lack of affiliation with another MVPD. Similar to the discussion above regarding the good faith requirement, we are not aware of concerns that a non-vertically integrated MVPD would have an incentive to favor an MVPD-affiliated programming vendor over an unaffiliated programming vendor based on reasons of ''affiliation'' as opposed to legitimate business reasons. Accordingly, we believe it is appropriate to limit this interpretation of section 616(a)(3) to vertically integrated MVPDs only. We seek comment on this proposed limitation.

37. We note that the Commission previously addressed a similar issue in connection with the channel occupancy limit set forth in section 613(f)(1)(B) of the Act, which requires the Commission to establish ''reasonable limits on the number of channels on a cable system that can be occupied by a video programmer in which a cable operator has an attributable interest.'' The Commission explained that this language is ''not entirely clear because it can also be read as applying to carriage of video programmers affiliated with the particular cable operator or to carriage of any vertically integrated cable programmer on any cable system.'' The Commission concluded that the ''most reasoned approach'' was to interpret this language ''to apply such limits only to video programmers that are vertically integrated with the particular cable operator in question.'' In adopting this interpretation, the Commission also concluded that ''cable operators have very little incentive to favor video programming services that are affiliated solely with a rival MSO'' and absent ''significant empirical evidence of existing discriminatory practices, we see no useful purpose in limiting the ability of cable operators to carry programming affiliated with a rival MSO.'' In 2008, however, the Commission adopted an *FNPRM* seeking comment on this conclusion in light of subsequent empirical studies as well as technological and marketplace developments. In doing so, the Commission tentatively concluded to ''expand the channel occupancy limit to include video programming networks owned by or affiliated with any cable operator,'' noting that such an interpretation is consistent with section 628(c)(2)(D) of the Act, which prohibits any cable operator from entering into an exclusive contract with any cable-affiliated programmer.

38. We seek comment on the extent to which there are real-world examples or reliable empirical studies demonstrating that vertically integrated MVPDs tend to favor programming vendors affiliated with other MVPDs. We note that the United States Court of Appeals for the DC Circuit previously struck down the Commission's horizontal cable ownership cap based in part on the Commission's failure to provide support for the concept that cable operators ''have incentives to agree to buy their

[31] *See* 47 CFR 76.65(b)(1) (The seven actions or practices that violate a duty to negotiate retransmission consent agreements in good faith are: ''(i) Refusal by a Negotiating Entity to negotiate retransmission consent; (ii) Refusal by a Negotiating Entity to designate a representative with authority to make binding representations on retransmission consent; (iii) Refusal by a Negotiating Entity to meet and negotiate retransmission consent at reasonable times and locations, or acting in a manner that unreasonably delays retransmission consent negotiations; (iv) Refusal by a Negotiating Entity to put forth more than a single, unilateral proposal; (v) Failure of a Negotiating Entity to respond to a retransmission consent proposal of the other party, including the reasons for the rejection of any such proposal; (vi) Execution by a Negotiating Entity of an agreement with any party, a term or condition of which, requires that such Negotiating Entity not enter into a retransmission consent agreement with any other television broadcast station or multichannel video programming distributor; and (vii) Refusal by a Negotiating Entity to execute a written retransmission consent agreement that sets forth the full understanding of the television broadcast station and the multichannel video programming distributor.''). We note that we are currently considering revisions to these rules. *See Retransmission Consent NPRM,* 26 FCC Rcd at 2729–35, paras. 20–30.

[32] *See* 47 CFR 76.65(b)(2) (''In addition to the standards set forth in § 76.65(b)(1), a Negotiating Entity may demonstrate, based on the totality of the circumstances of a particular retransmission consent negotiation, that a television broadcast station or multichannel video programming distributor breached its duty to negotiate in good faith as set forth in 76.65(a).''). We note that we are currently considering revisions to these rules. *See Retransmission Consent NPRM,* 26 FCC Rcd at 2735–37, paras. 31–33.

[33] *See 1993 Program Carriage Order,* 9 FCC Rcd at 2654, para. 29 (''For complaints alleging discriminatory treatment that favors 'affiliated' programming vendors, the complainant must provide evidence that the defendant has an attributable interest in the allegedly favored programming vendor, as set forth in § 76.1300(a).''); *see also* 47 CFR 76.1300(a) (''For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.''); *Review of the Commission's Cable Attribution Rules,* Report and Order, 14 FCC Rcd 19014, 19063, para. 132 n.333 (1999) (amending definition of ''affiliated'' in the program carriage rules to be consistent with definition of this term in other cable rules).

[34] *See* Hallmark Channel Reply at 8 n.16 (''In one important respect, an MVPD's incentive to discriminate against its competitor MVPDs is reduced. Specifically, an MVPD can have an incentive to advantage the affiliated services of other vertically-integrated MVPDs, over independent services, in exchange for favorable treatment when the first MVPD seeks to obtain carriage of its own affiliated services by the second MVPD. Like an MVPD's incentive to favor its own affiliated services, this behavior has a dramatic and anticompetitive impact on independent programmers' ability to bargain for fair carriage terms.''); *see id.* at 20; NAMAC Reply at 16 (referring to the ''common practice of cable operators to swap programming with each other'').

programming from one another.'' [35] In adopting a new horizontal ownership cap in 2008, the Commission concluded that it ''lack[ed] evidence to draw definitive conclusions regarding the likelihood that cable operators will behave in a coordinated fashion.'' In an accompanying *FNPRM* pertaining to the Commission's channel occupancy limits, the Commission sought comment on the reliability of certain studies and criticisms thereof, including one study based on data from 1999 finding that ''vertically integrated MSOs are more likely than non-vertically integrated MSOs to carry the start-up basic cable networks of other MSOs.'' [36] We seek comment on how these studies or any other studies, including studies based on more recent data, either support or refute the position that vertically integrated MVPDs tend to favor programming vendors affiliated with other MVPDs over unaffiliated programming vendors. Is there sufficient evidence to warrant allowing programming vendors to make a case-by-case showing through the program carriage complaint process that a vertically integrated MVPD has discriminated on the basis of a programming vendor's lack of affiliation with another MVPD?

39. We also seek comment on whether it is reasonable to interpret section 616(a)(3) to preclude a vertically integrated MVPD from discriminating on the basis of a programming vendor's lack of affiliation with another MVPD. Section 616(a)(3) requires the Commission to adopt regulations that prevent an MVPD from engaging in conduct that unreasonably restrains the ability of ''an unaffiliated video programming vendor'' to compete fairly by discriminating on the basis of ''affiliation or non-affiliation'' of programming vendors. The terms ''unaffiliated,'' ''affiliation,'' and ''non-affiliation'' are not defined in section 616. These terms could be interpreted narrowly as in the *1993 Program Carriage Order* to prohibit a vertically integrated MVPD only from discriminating on the basis of ''affiliation or non-affiliation'' in a manner that favors its own affiliated programming vendor, but would not prevent a vertically integrated MVPD from discriminating on the basis of ''affiliation or non-affiliation'' in a manner that favors a programming vendor affiliated with another MVPD. Alternatively, these terms might be interpreted more broadly to prevent a vertically integrated MVPD from discriminating on the basis of ''affiliation or non-affiliation'' in a manner that favors any programming vendor affiliated with any MVPD. We note that one cable operator has previously advanced a broad interpretation of section 616(a)(3), stating that this provision precludes collusion among cable operators.[37]

40. We seek comment on which interpretation is more consistent with Congressional intent. Is the broad interpretation more consistent with Congress's goal to ensure that cable operators provide the ''widest possible diversity of information sources and services to the public'' [38] as well as with the program access requirements, which prohibit exclusive contracts and discriminatory conduct between a cable operator and *any* cable-affiliated programmer, not just its own affiliated programmer? Is the narrow interpretation more consistent with certain language in the legislative history of the 1992 Cable Act? For example, language in the House Report states that section 616 ''was crafted to ensure that a multichannel video programming *operator* does not discriminate against an unaffiliated video programming vendor in which *it* does not hold a financial interest.'' [39] How should we interpret other language in the legislative history of the 1992 Cable Act? For example, one of the stated findings of the 1992 Cable Act is that ''cable operators have the incentive and ability to favor their affiliated programmers. This could make it more difficult for noncable-affiliated programmers to secure carriage on cable systems.'' This language is unclear as to whether Congress was referring to the incentives of individual cable operators to favor their own affiliated programmers, or whether Congress was referring to the incentives of cable operators as a whole to favor cable-affiliated programmers, both their own affiliates and those affiliated with other cable operators.[40]

41. We also seek comment on the practical implications of an interpretation of section 616(a)(3) that would preclude a vertically integrated MVPD from discriminating on the basis of a programming vendor's lack of affiliation with another MVPD. For example, how should we amend the requirements for establishing a *prima facie* case of discrimination on the basis of affiliation in the absence of direct evidence? Should we provide that the complaint must contain evidence that the complainant provides video programming that is similarly situated to video programming provided by a programming vendor affiliated with the defendant MVPD or with another MVPD? Should we also require the complainant to provide evidence that the defendant MVPD is vertically integrated? We also seek comment on how this interpretation of section 616(a)(3) will impact the proposed good faith negotiation requirement for vertically integrated MVPDs described above. Should the rule provide that a vertically integrated MVPD must negotiate in good faith with an unaffiliated programming vendor with respect to video programming that is

[35] *Implementation of section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992,* Third Report and Order, 14 FCC Rcd 19098, 19116, para. 43 (1999) (''*Third Report and Order*''), *rev'd and remanded in part and aff'd in part, Time Warner Entertainment Co.* v. *FCC,* 240 F.3d 1126, 1132 (DC Cir. 2001) (''The Commission never explains why the vertical integration of MSOs gives them 'mutual incentive to reach carriage decisions beneficial to each other,' what may be the firms' 'incentives to buy * * * from one another,' or what the probabilities are that firms would engage in reciprocal buying (presumably to reduce each other's average programming costs).'' (quoting *Third Report and Order,* 14 FCC Rcd at 19116, para. 43)).

[36] *See Cable Ownership Rules FNPRM,* 23 FCC Rcd at 2194, paras. 139–141 (citing Jun-Seok Kang, *Reciprocal Carriage of Vertically Integrated Cable Networks: An Empirical Study* (''Kang Study'')); *see also id.* at 2194, para. 141 (seeking comment on whether ''Kang's study show[s] that a more extended form of vertical foreclosure exists, based on 'reciprocal carriage' of integrated programming, in which a coalition of cable operators unfairly favor each others' affiliated programming''). We note that the Kang Study states that it is based on data from 1999. *See* Kang Study at 13.

[37] In opposing the horizontal cable ownership cap, Comcast Corporation has stated that ''there are alternative, better tailored legal remedies that could be relied upon to reduce the risk of collusion, even if such a risk were shown to exist. The Commission's program carriage rules, which explicitly prohibit a cable operator from 'discriminating in video programming distribution *on the basis of affiliation or nonaffiliation,'* already proscribe collusive behavior.'' *See* Supplemental Comments of Comcast, MM Docket No. 92–264 (February 14, 2007), at 15 (citing 47 U.S.C. 536(a)(3) and 47 CFR 76.1301(c)) (emphasis in original).

[38] 47 U.S.C. 521(4); *see also* 1992 Cable Act, section 2(a)(5) (expressing concern regarding the inability of unaffiliated programming vendors to secure carriage); *see also 1993 Program Carriage Order,* 9 FCC Rcd at 2643, para. 2 (noting Congress's concern in passing the 1992 Cable Act that unaffiliated programming vendors could not obtain carriage on the same favorable terms as vertically integrated programming vendors).

[39] H.R. Rep. No. 102–628 (1992), at 110 (emphasis added); *see also* S. Rep. No. 102–92 (1991), at 25, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1158 (''For example, the cable *operator* might give *its* affiliated programmer a more desirable channel position than another programmer, or even refuse to carry other programmers.'') (emphasis added).

[40] *See* S. Rep. No. 102–92 (1991), at 25, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1158 (''vertical integration gives cable *operators* the incentive and ability to favor *their* affiliated programming services'') (emphasis added); *see id.* at 27, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1160 (''To ensure that cable *operators* do not favor *their* affiliated programmers over others, the legislation bars cable operators from discriminating against unaffiliated programmers.'') (emphasis added).

similarly situated to video programming affiliated with the MVPD or with another MVPD? We also seek comment on how this interpretation of section 616(a)(3) will impact discovery. Should we expect that the programming vendor affiliated with the non-defendant MVPD will have relevant information, such as contracts with other MVPDs? For cases decided on the merits by the Media Bureau, should our rules specify procedures for requesting that the Media Bureau issue a subpoena pursuant to section 409 of the Act to compel a third-party affiliated programming vendor to participate in discovery? [41]

42. In addition to the foregoing, we seek comment on whether to broaden the definition of ''affiliated'' and ''attributable interest'' in § 76.1300 of the Commission's rules to reflect changes in the marketplace. These rules focus on the extent to which a programming vendor and an MVPD have common ownership or management.[42] Are there other kinds of relationships between a programming vendor and an MVPD, other than those involving common ownership or management, that should nonetheless be considered ''affiliation'' under our rules? For example, to the extent that a programming vendor and an MVPD have entered into a contractual relationship that requires carriage of commonly owned channels and adversely affects the ability of other programming vendors to obtain carriage, should this relationship be considered ''affiliation'' under the program carriage rules? In addition, we seek comment on the extent to which MVPDs are making investments in programming vendors or sports teams that were not common when the 1992 Cable Act was enacted and that may not be considered ''affiliation'' under our current rules but that might nonetheless provide the MVPD with an incentive to favor certain programming vendors for other than legitimate business reasons. To the extent this is a concern, how should our rules be amended to address this issue? We also seek comment on the extent to which MVPDs are affiliated with ''video programming vendors'' that are not necessarily programming networks. Are the protections afforded by section 616 limited to programming networks? [43] If not, do our current rules need to be amended to address concerns that MVPDs favor affiliated content over non-affiliated content for other than legitimate business reasons? Should our rules be amended to better address discrimination against a video programming vendor that seeks to distribute its own content, such as sports, movie or other programming, in order to favor similar content associated with the MVPD?

I. Burden of Proof in Program Carriage Discrimination Cases

43. After a complainant establishes a *prima facie* case of program carriage discrimination, the case proceeds to a decision on the merits. Only two program carriage cases have been decided on the merits to date. In neither case was the Commission required to decide the issue of which party bears the burdens of production and persuasion after the complainant establishes a *prima facie* case. In *MASN* v. *Time Warner Cable,* an arbitrator determined that the burdens shift to the defendant after the complainant establishes a *prima facie* case. Conversely, in *WealthTV,* an ALJ ruled that the burdens remain with the complainant after the complainant establishes a *prima facie* case.[44] On review of these cases, however, the Commission found no reason to address this issue because the facts demonstrated that the defendant would prevail even assuming that the burdens shifted to the defendant.[45]

44. We propose to codify in our rules which party bears the burdens of production and persuasion in a program carriage discrimination case after the complainant has established a *prima facie* case. We seek comment on two alternative frameworks for assigning these burdens: The program access discrimination framework and the intentional discrimination framework. Under the program access discrimination framework, after a complainant establishes a *prima facie* case of discrimination based on either direct or circumstantial evidence, the burdens of production and persuasion shift to the defendant to establish legitimate and non-discriminatory reasons for its carriage decision.[46] Under the intentional discrimination framework, the shifting of burdens

[41] *See* 47 U.S.C. 409. We note that the hearing rules applicable to ALJs contain procedures for requesting and issuing subpoenas. *See* 47 CFR 1.331–340.

[42] *See* 47 CFR 76.1300(a) (''Affiliated. For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.''); 47 CFR 76.1300(b) (''Attributable interest. The term 'attributable interest' shall be defined by reference to the criteria set forth in Notes 1 through 5 to 76.501 provided, however, that: (1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and (2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.'').

[43] Section 616 defines the term ''video programming vendor'' broadly as ''a person engaged in the production, creation, or wholesale distribution of video programming for sale.'' 47 U.S.C. 536(b). The Act defines ''video programming'' as ''programming provided by, or generally considered comparable to programming provided by, a television broadcast station.'' 47 U.S.C. 522(20). The Senate Report accompanying the 1992 Cable Act, however, appears to indicate that the term ''video programmer'' includes only networks, and not program suppliers. S. Rep. No. 102–92 (1991), at 73, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1206 (''The term 'video programmer' means a person engaged in the production, creation, or wholesale distribution of a video programming service for sale. This term applies to those video programmers which enter into arrangements with cable operators for carriage of a programming service. For example, the term 'video programmer' applies to Home Box Office (HBO) but not to those persons who sell movies and other programming to HBO. It applies to a pay-per-view service but not to the supplier of the programming for this service.''). We note, however, that section 616 of the Act uses the term ''video programming vendor'' as stated in the House version of what became section 616, not ''video programmer'' as stated in the Senate version. *See* 47 U.S.C. 536(b); *see also* H.R. Rep. No. 102–628 (1992), at 18–19, 110, 143–44.

[44] *See WealthTV Recommended Decision,* 24 FCC Rcd at 12995–96, para. 58 and 12997, para. 61 (reaffirming ruling of the Presiding Judge that the program carriage complainant after establishing a *prima facie* case bears the burden of proceeding with the introduction of evidence and the burden of proof). The ALJ also concluded that the allocation of the burden of proof was immaterial to the decision because ''[w]hatever the allocation of burdens, the preponderance of the evidence, viewed in its entirety, demonstrates that the defendants never violated section 616 of the Act or § 76.1301(c) of the rules.'' *See id.* at 12997, para. 62.

[45] *See MASN* v. *Time Warner Cable,* 25 FCC Rcd at 18105, para. 11 (''We need not, and do not, address in this decision the issue of the appropriate legal framework, however, because we find that TWC would prevail under either framework. That is, even assuming that the burdens of production and persuasion shift to TWC to establish legitimate and non-discriminatory reasons for its carriage decision after MASN establishes a *prima facie* case of discrimination, we find that TWC prevails because it has established legitimate reasons for its carriage decision that are borne out by the record and are not based on the programmer's affiliation or non-affiliation.''); *WealthTV Commission Order* at para. 18 (''[W]e need not decide here whether the ALJ properly allocated the burdens. * * * We conclude that the defendants would have prevailed even if they had been required to carry the burdens of production and proof, as WealthTV contends was proper. Accordingly, we need not consider whether the burdens were properly allocated. * * *'').

[46] *See 1993 Program Access Order,* 8 FCC Rcd at 3416, para. 125 (''When filing a complaint, the burden is on the complainant MVPD to make a *prima facie* showing that there is a difference between the terms, conditions or rates charged (or offered) to the complainant and its competitor by a satellite broadcast programming vendor or a vertically integrated satellite cable programming vendor that meets our attribution test.''); *id.* at 3364, para. 15 (''When evaluating a discrimination complaint, we will initially focus on the difference in price paid by (or offered to) the complainant as compared to that paid by (or offered to) a competing distributor. The [defendant] program vendor will then have to justify the difference using the statutory factors set forth in section 628(c)(2)(B). * * * In all cases, the [defendant] programmer will bear the burden to establish that the price differential is adequately explained by the statutory factors.'').

varies depending upon whether the complainant relies on direct or circumstantial evidence to establish a *prima facie* case of discrimination. If a complainant relies on direct evidence to establish a *prima facie* case of discrimination, the burdens of production and persuasion shift to the defendant to establish that the carriage decision would have been the same absent considerations of affiliation. If a complainant relies on circumstantial evidence to establish a *prima facie* case of discrimination, the burden of production (but not the burden of persuasion) shifts to the defendant to produce evidence of legitimate and non-discriminatory reasons for its carriage decision.[47] If the defendant meets this burden of production, the complainant would then have the burden of persuasion to show that these reasons are so implausible that they constitute pretexts for discrimination.[48]

45. We seek comment on whether one of these frameworks is compelled by the language of section 616(a)(3). If not, we seek comment on whether one of these frameworks is more consistent with the statutory scheme of section 616, its underlying policy objectives, and its legislative history.[49] We also seek comment on the potential ramifications of each framework for consumers, MVPDs, and unaffiliated programming vendors.

II. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

46. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'')[50] the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') concerning the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking in MB Docket No. 11–131 (''*NPRM*''). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM.* The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'').[51] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register.**[52]

B. Need for, and Objectives of, the Proposed Rule Changes

47. In 1993, the Commission adopted rules implementing a provision of the 1992 Cable Act[53] pertaining to carriage of video programming vendors by multichannel video programming distributors (''MVPDs''). These rules are intended to benefit consumers by promoting competition and diversity in the video programming and video distribution markets (the ''program carriage'' rules).[54] As required by Congress, these rules allow for the filing of complaints with the Commission alleging that an MVPD has (i) required a financial interest in a video programming vendor's program service as a condition for carriage (the ''financial interest'' provision);[55] (ii) coerced a video programming vendor to provide, or retaliated against a vendor for failing to provide, exclusive rights as a condition of carriage (the ''exclusivity'' provision);[56] or (iii) unreasonably restrained the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage (the ''discrimination'' provision).[57] Congress specifically directed the Commission to provide for ''expedited review'' of these complaints and to provide for appropriate penalties and remedies for any violations.[58] Programming vendors have complained that the Commission's procedures for addressing program carriage complaints have hindered the filing of legitimate complaints and have failed to provide for the expedited review envisioned by Congress.

48. The *NPRM* seeks comment on a series of proposals to revise or clarify the Commission's program carriage rules intended to improve the Commission's procedures for handling program carriage complaints and to further the goals of the program carriage statute. The *NPRM* seeks comment on the following:

- Modifying the program carriage statute of limitations to provide that a complaint must be filed within one year of the act that allegedly violated the rules;[59]
- Revising discovery procedures for program carriage complaint proceedings in which the Media Bureau rules on the merits of the complaint after discovery is conducted, including expanded discovery procedures (also known as party-to-party discovery) and an automatic document production process, to ensure fairness to all parties while also ensuring compliance with the expedited resolution deadlines adopted in the *Second Report and Order* in MB Docket No. 07–42;[60]
- Permitting the award of damages in program carriage cases;[61]
- Providing the Media Bureau or ALJ with the discretion to order parties to submit their best ''final offer'' for the rates, terms, and conditions for the programming at issue in a complaint proceeding to assist in crafting a remedy;[62]
- Clarifying the rule that delays the effectiveness of a mandatory carriage

[47] *See St. Mary's Honor Center* v. *Hicks,* 509 U.S. 502, 506 (1993) (to meet its burden of production, the defendant must clearly set forth, through the introduction of admissible evidence, reasons for the action which, if believed by the trier of fact, would support a finding that unlawful discrimination was not the cause of the action in question).

[48] *See Reeves* v. *Sanderson Plumbing Products, Inc.,* 530 U.S. 133, 143 (2000) (''And in attempting to satisfy this burden, the plaintiff—once the employer produces sufficient evidence to support a nondiscriminatory explanation for its decision—must be afforded the 'opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.' '' (citations omitted)).

[49] *See, e.g.,* H.R. Rep. No. 102–628 (1992), at 110 (''The Committee intends that the term 'discrimination' is to be distinguished from how that term is used in connection with actions by common carriers subject to title II of the Communications Act. The Committee does not intend, however, for the Commission to create new standards for conduct in determining discrimination under this section. An extensive body of law exists addressing discrimination in normal business practices, and the Committee intends the Commission to be guided by these precedents.'').

[50] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[51] *See* 5 U.S.C. 603(a).

[52] *See id.*

[53] *See* Cable Television Consumer Protection and Competition Act of 1992, Public Law 102–385, 106 Stat. 1460 (1992) (''1992 Cable Act''); *see also* 47 U.S.C. 536.

[54] *See Implementation of sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage,* MM Docket No. 92–265, *Second Report and Order,* 9 FCC Rcd 2642 (1993) (''*1993 Program Carriage Order*''); *see also Implementation of the Cable Television Consumer Protection And Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage,* MM Docket No. 92–265, Memorandum Opinion and Order, 9 FCC Rcd 4415 (1994) (''*1994 Program Carriage Order*''). The Commission's program carriage rules are set forth at 47 CFR 76.1300–76.1302.

[55] *See* 47 CFR 76.1301(a); *see also* 47 U.S.C. 536(a)(1).

[56] *See* 47 CFR 76.1301(b); *see also* 47 U.S.C. 536(a)(2).

[57] *See* 47 CFR 76.1301(c); *see also* 47 U.S.C. 536(a)(3).

[58] *See* 47 U.S.C. 536(a)(4).

[59] *See NPRM* in MB Docket No. 11–131 at paras. 38–40.

[60] *See id.* at paras. 41–49.

[61] *See id.* at paras. 50–53.

[62] *See id.* at paras. 54–55.

remedy until it is upheld by the Commission on review, including codifying a requirement that the defendant MVPD must make an evidentiary showing to the Media Bureau or an ALJ as to whether a mandatory carriage remedy would result in deletion of other programming; [63]

- Codifying in our rules that retaliation by an MVPD against a programming vendor for filing a program carriage complaint is actionable as a potential form of discrimination on the basis of affiliation and adopting other measures to address retaliation; [64]
- Adopting a rule that requires a vertically integrated MVPD to negotiate in good faith with an unaffiliated programming vendor with respect to video programming that is similarly situated to video programming affiliated with the MVPD; [65]
- Clarifying that the discrimination provision precludes a vertically integrated MVPD from discriminating on the basis of a programming vendor's lack of affiliation with another MVPD; [66] and
- Codifying in our rules which party bears the burden of proof in program carriage discrimination cases after the complainant has established a *prima facie* case.[67]

The *NPRM* also invites commenters to suggest any other changes to the program carriage rules that would improve the Commission's procedures and promote the goals of the program carriage statute.[68]

C. Legal Basis

49. The proposed action is authorized pursuant to sections 4(i), 4(j), 303(r), and 616 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 536.

D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

50. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[69] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [70] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[71] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[72] Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

51. *Wired Telecommunications Carriers.* The 2007 North American Industry Classification System (''NAICS'') defines ''Wired Telecommunications Carriers'' as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' [73] The SBA has developed a small business size standard for wireline firms within the broad economic census category, ''Wired Telecommunications Carriers.'' [74] Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[75] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these firms can be considered small.[76]

52. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined above. The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees.[77] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these firms can be considered small.[78]

53. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide.[79] Industry data indicate that all but ten cable operators nationwide are small under this size standard.[80] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[81] Industry data indicate that, of 6,101 systems nationwide, 4,410 systems have under 10,000 subscribers, and an additional 258 systems have 10,000–19,999 subscribers.[82] Thus, under this standard, most cable systems are small.

[63] *See id.* at paras. 56–59.

[64] *See id.* at paras. 60–67.

[65] *See id.* at paras. 68–71.

[66] *See id.* at paras. 72–78.

[67] *See id.* at paras. 79–81.

[68] *See id.* at para. 37.

[69] 5 U.S.C. 603(b)(3).

[70] 5 U.S.C. 601(6).

[71] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[72] 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

[73] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers''; *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[74] 13 CFR 121.201, 2007 NAICS code 517110.

[75] *See id.*

[76] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[77] 13 CFR 121.201, 2007 NAICS code 517110.

[78] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[79] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[80] *See* Broadcasting & Cable Yearbook 2010 at C–2 (2009) (data current as of Dec. 2008).

[81] 47 CFR 76.901(c).

[82] *See* Television & Cable Factbook 2009 at F–2 (2009) (data current as of Oct. 2008). The data do not include 957 systems for which classifying data were not available.

54. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [83] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[84] Industry data indicate that all but nine cable operators nationwide are small under this subscriber size standard.[85] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[86] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

55. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' [87] which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[88] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these firms can be considered small.[89] Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and EchoStar Communications Corporation (''EchoStar'') (marketed as the DISH Network).[90] Each currently offers subscription services. DIRECTV [91] and EchoStar [92] each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

56. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' [93] which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[94] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.

57. *Home Satellite Dish (''HSD'') Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers.[96] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees.[97] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.[98]

58. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).[99] In connection with the 1996

[83] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[84] 47 CFR 76.901(f); *see FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

[85] *See* Broadcasting & Cable Yearbook 2010 at C–2 (2009) (data current as of Dec. 2008).

[86] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to 76.901(f) of the Commission's rules. *See* 47 CFR 76.901(f).

[87] *See* 13 CFR 121.201, 2007 NAICS code 517110. The 2007 NAICS definition of the category of ''Wired Telecommunications Carriers'' is in paragraph 6, above.

[88] 13 CFR 121.201, 2007 NAICS code 517110.

[89] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[90] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Thirteenth Annual Report, 24 FCC Rcd 542, 580, para. 74 (2009) (''*13th Annual Report*''). We note that, in 2007, EchoStar purchased the licenses of Dominion Video Satellite, Inc. (''Dominion'') (marketed as Sky Angel). *See* Public Notice, ''Policy Branch Information; Actions Taken,'' Report No. SAT–00474, 22 FCC Rcd 17776 (IB 2007).

[91] As of June 2006, DIRECTV is the largest DBS operator and the second largest MVPD, serving an estimated 16.20% of MVPD subscribers nationwide. *See 13th Annual Report,* 24 FCC Rcd at 687, Table B–3.

[92] As of June 2006, DISH Network is the second largest DBS operator and the third largest MVPD, serving an estimated 13.01% of MVPD subscribers nationwide. *Id.*

[93] 13 CFR 121.201, 2007 NAICS code 517110.

[94] *See id.*

[95] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[96] 13 CFR 121.201, 2007 NAICS code 517110.

[97] *See id.*

[98] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[99] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* MM

Continued

BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years.[100] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.[101] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.[102] The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.[103] Auction 86 concluded in 2009 with the sale of 61 licenses.[104] Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

59. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[105] Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' [106] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees.[107] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.[108]

60. *Fixed Microwave Services.* Microwave services include common carrier,[109] private-operational fixed,[110] and broadcast auxiliary radio services.[111] They also include the Local Multipoint Distribution Service (LMDS),[112] the Digital Electronic Message Service (DEMS),[113] and the 24 GHz Service,[114] where licensees can choose between common carrier and non-common carrier status.[115] At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons.[116] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[117] For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.[118] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

61. *Open Video Systems.* The open video system (''OVS'') framework was established in 1996, and is one of four

Docket No. 94–131, PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

[100] 47 CFR 21.961(b)(1).

[101] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1500 or fewer employees.

[102] *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86,* Public Notice, 24 FCC Rcd 8277 (2009).

[103] *Id.* at 8296.

[104] *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period,* Public Notice, 24 FCC Rcd 13572 (2009).

[105] The term ''small entity'' within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on EBS licensees.

[106] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers,'' (partial definition), *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[107] 13 CFR 121.201, 2007 NAICS code 517110.

[108] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[109] *See* 47 CFR part 101, subparts C and I.

[110] *See* 47 CFR part 101, subparts C and H.

[111] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[112] *See* 47 CFR part 101, subpart L.

[113] *See* 47 CFR part 101, subpart G.

[114] *See id.*

[115] *See* 47 CFR 101.533, 101.1017.

[116] 13 CFR 121.201, 2007 NAICS code 517210.

[117] *See id.* The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[118] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.*

statutorily recognized options for the provision of video programming services by local exchange carriers.[119] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[120] OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' [121] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees.[122] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.[123] In addition, we note that the Commission has certified some OVS operators, with some now providing service.[124] Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises.[125] The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities.

62. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis * * *. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.'' [126] The SBA has developed a small business size standard for this category, which is: All such firms having $15 million dollars or less in annual revenues.[127] To gauge small business prevalence in the Cable and Other Subscription Programming industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 396 firms in this category that operated for the entire year.[128] Of that number, 325 operated with annual revenues of $9,999,999 dollars or less.[129] Seventy-one (71) operated with annual revenues of between $10 million and $100 million or more.[130] Thus, under this category and associated small business size standard, the majority of firms can be considered small.

63. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [131] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope.[132] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

64. *Incumbent Local Exchange Carriers (''LECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[133] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.[134]

65. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[135] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.[136] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

66. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than $14.0 million in annual receipts.[137] Business concerns included in this industry are those ''primarily engaged in broadcasting images together

[119] 47 U.S.C. 571(a)(3)–(4). *See 13th Annual Report,* 24 FCC Rcd at 606, para. 135.

[120] *See* 47 U.S.C. 573.

[121] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers''; *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[122] 13 CFR 121.201, 2007 NAICS code 517110.

[123] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[124] A list of OVS certifications may be found at *http://www.fcc.gov/mb/ovs/csovscer.html.*

[125] *See 13th Annual Report,* 24 FCC Rcd at 606–07, para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

[126] U.S. Census Bureau, 2007 NAICS Definitions, ''515210 Cable and Other Subscription Programming''; *http://www.census.gov/naics/2007/def/ND515210.HTM#N515210.*

[127] 13 CFR 121.201, 2007 NAICS code 515210.

[128] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=700&-ds_name=EC0751SSSZ4&-_lang=en.*

[129] *Id.*

[130] *Id.*

[131] 15 U.S.C. 632.

[132] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small-business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

[133] 13 CFR 121.201, 2007 NAICS code 517110.

[134] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[135] 13 CFR 121.201, 2007 NAICS code 517110.

[136] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[137] *See* 13 CFR 121.201, 2007 NAICS Code 515120.

with sound.'' [138] The Commission has estimated the number of licensed commercial television stations to be 1,390.[139] According to Commission staff review of the BIA/Kelsey, MAPro Television Database (''BIA'') as of April 7, 2010, about 1,015 of an estimated 1,380 commercial television stations [140] (or about 74 percent) have revenues of $14 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 391.[141] We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [142] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

67. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

68. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.'' [143] We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: All such firms having $29.5 million dollars or less in annual revenues.[144] To gauge small business prevalence in the Motion Picture and Video Production industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 9,095 firms in this category that operated for the entire year.[145] Of these, 8,995 had annual receipts of $24,999,999 or less, and 100 has annual receipts ranging from not less that $25,000,000 to $100,000,000 or more.[146] Thus, under this category and associated small business size standard, the majority of firms can be considered small.

69. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors.'' [147] We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: all such firms having $29.5 million dollars or less in annual revenues.[148] To gauge small business prevalence in the Motion Picture and Video Distribution industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 450 firms in this category that operated for the entire year.[149] Of these, 434 had annual receipts of $24,999,999 or less, and 16 had annual receipts ranging from not less that $25,000,000 to $100,000,000 or more.[150] Thus, under this category and associated small business size standard, the majority of firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

70. Certain proposed rule changes discussed in the *NPRM* would affect reporting, recordkeeping, or other compliance requirements. These proposed changes would primarily impact video programming vendors and MVPDs, and would only apply in the event a program carriage complaint is filed. First, the *NPRM* proposes revised discovery procedures for program carriage complaint proceedings in which the Media Bureau rules on the merits of the complaint after discovery.[151] The revised discovery procedures would require parties to a complaint to produce certain documents to the other party within defined time periods.[152] Under the expanded discovery process, a party to a program carriage complaint can request discovery directly from the other party, which that party may oppose, with the obligation to produce the disputed material suspended until the Commission rules on the objection.[153] Under automatic document production, a party to a program carriage complaint

[138] U.S. Census Bureau, 2007 NAICS Definitions, ''515120 Television Broadcasting''; *http://www.census.gov/naics/2007/def/ND515120.HTM.* This category description continues, ''These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.'' Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

[139] *See* News Release, ''Broadcast Station Totals as of December 31, 2010,'' 2011 WL 484756 (dated Feb. 11, 2011) (''*Broadcast Station Totals*''); also available at *http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0211/DOC-304594A1.pdf.*

[140] We recognize that this total differs slightly from that contained in *Broadcast Station Totals, supra,* note 139; however, we are using BIA's estimate for purposes of this revenue comparison.

[141] *See Broadcast Station Totals, supra,* note 139.

[142] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 121.103(a)(1).

[143] U.S. Census Bureau, 2007 NAICS Definitions, ''51211 Motion Picture and Video Production''; *http://www.census.gov/naics/2007/def/NDEF512.HTM#N51211.*

[144] 13 CFR 121.201, 2007 NAICS code 512110.

[145] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=200&-ds_name=EC0751SSSZ4&-_lang=en.*

[146] *Id.*

[147] *See* U.S. Census Bureau, 2007 NAICS Definitions, ''51212 Motion Picture and Video Distribution''; *http://www.census.gov/naics/2007/def/NDEF512.HTM#N51212.*

[148] 13 CFR 121.201, 2007 NAICS code 512120.

[149] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=200&-ds_name=EC0751SSSZ4&-_lang=en.*

[150] *Id.*

[151] *See NPRM* in MB Docket No. 11–131 at paras. 41–49.

[152] *See NPRM* at paras. 43–44.

[153] *See NPRM* at para. 42.

would be required to provide certain documents set forth in the Commission's rules to the other party within ten days after the Media Bureau's determination that the complainant has established a *prima facie* case.[154] Second, the *NPRM* proposes adopting procedures allowing for the award of damages in program carriage cases.[155] These procedures would require a program carriage complainant to provide either a detailed computation of damages or a detailed outline of the methodology that would be used to create a computation of damages.[156] To the extent the Commission approves a damages computation methodology, the rules would require the parties to file with the Commission a statement regarding their efforts to agree upon a final amount of damages pursuant to the approved methodology.[157] The *NPRM* proposes similar procedures for the application of new rates, terms, and conditions as of the expiration date of the previous contract in cases where the Media Bureau issues a standstill order in a program carriage complaint proceeding.[158] Third, the *NPRM* proposes to adopt a rule providing that the Media Bureau or an ALJ may order parties to a program carriage complaint to submit their best ''final offer'' for the rates, terms, and conditions for the programming at issue in a complaint to assist in crafting a remedy.[159] Fourth, the *NPRM* proposes to codify a requirement that the defendant MVPD in a program carriage complaint proceeding must make an evidentiary showing to the Media Bureau or an ALJ as to whether a mandatory carriage remedy would result in deletion of other programming on the MVPD's system.[160] Fifth, the *NPRM* proposes to adopt a rule prohibiting an MVPD from retaliating against a video programming vendor for filing a program carriage complaint.[161] If adopted, this rule would enable a video programming vendor to file a program carriage complaint alleging retaliation, and would require the defendant MVPD to defend its actions. Sixth, the *NPRM* proposes to adopt a rule requiring a vertically integrated MVPD to negotiate in good faith with an unaffiliated programming video programming vendor with respect to video programming that is similarly situated to video programming affiliated with the MVPD.[162] If adopted, this rule would enable a video programming vendor to file a program carriage complaint alleging that a vertically integrated MVPD failed to negotiate in good faith, and would require the defendant MVPD to defend its actions. In addition, the rule would list objective good faith negotiation standards, the violation of which would be considered a *per se* violation of the good faith negotiation obligation.[163] Seventh, the *NPRM* proposes to clarify that the program carriage discrimination provision precludes a vertically integrated MVPD from discriminating on the basis of a programming vendor's lack of affiliation with another MVPD.[164] If adopted, this rule would enable a video programming vendor to file a program carriage complaint alleging that a vertically integrated MVPD discriminated on the basis of a programming vendor's lack of affiliation with another MVPD, and would require the defendant MVPD to defend its actions.

F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

71. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[165]

72. As discussed in the *NPRM,* our goal in this proceeding is to further improve our procedures for addressing program carriage complaints and to advance the goals of the program carriage statute. The specific changes on which we seek comment, set forth in Paragraph 3 above, are intended to achieve these goals. By improving and clarifying the Commission's procedures for addressing program carriage complaints, the proposals would benefit both video programming vendors and MVPDs, including those that are smaller entities, as well as MVPD subscribers. Thus, the proposed rules would benefit smaller entities as well as larger entities. For this reason, an analysis of alternatives to the proposed rules is unnecessary. Further, we note that in the discussion of whether to require MVPDs to negotiate in good faith with unaffiliated video programming vendors [166] and whether to clarify that the discrimination provision precludes an MVPD from discriminating on the basis of a programming vendor's lack of affiliation with another MVPD,[167] the Commission in the *NPRM* specifically proposes to apply these rules to only vertically integrated MVPDs. Because small entities are unlikely to be vertically integrated MVPDs, this proposed limitation would provide particular benefit to small entities.

73. We invite comment on whether there are any alternatives we should consider that would minimize any adverse impact on small businesses, but which maintain the benefits of our proposals.

G. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

74. None.

III. Ordering Clauses

75. Accordingly, *It is ordered* that pursuant to the authority contained in sections 4(i), 4(j), 303(r), and 616 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 536, this *Notice of Proposed Rulemaking* in MB Docket No. 11–131 *Is Adopted.*

76. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *Shall Send* a copy of this *Notice of Proposed Rulemaking* in MB Docket No. 11–131, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Equal employment opportunity, Political candidates, and Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 76 as follows:

[154] *See NPRM* at para. 44.

[155] *See NPRM* at paras. 51–52.

[156] *See NPRM* at para. 52.

[157] *See NPRM* at para. 52.

[158] *See NPRM* at para. 53.

[159] *See NPRM* at paras. 54–55.

[160] *See NPRM* at para. 58.

[161] *See NPRM* at paras. 60–67.

[162] *See NPRM* at paras. 68–71.

[163] *See NPRM* at para. 71.

[164] *See NPRM* at paras. 72–77.

[165] 5 U.S.C. 603(c)(1)–(c)(4).

[166] *See NPRM* in MB Docket No. 11–131 at para. 69.

[167] *See NPRM* at para. 72.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

2. Section 76.1301 is amended by adding paragraphs (d) and (e) to read as follows:

§ 76.1301 Prohibited practices.

* * * * *

(d) *Retaliation.* No multichannel video programming distributor shall retaliate against a video programming vendor for filing a complaint with the Commission alleging a violation of § 76.1301, if the effect of the conduct is to unreasonably restrain the ability of the video programming vendor to compete fairly.

(e) *Bad faith negotiations.* (1) No multichannel video programming distributor shall fail to negotiate in good faith with an unaffiliated video programming vendor with respect to video programming that is similarly situated to video programming affiliated (as defined in § 76.1300(a)) with the multichannel video programming distributor, if the effect of such a failure to negotiate in good faith is to unreasonably restrain the ability of the unaffiliated video programming vendor to compete fairly.

(2) Video programming will be considered similarly situated based on a combination of factors, such as genre, ratings, license fee, target audience, target advertisers, target programming, and other factors.

(3) The following actions or practices violate the multichannel video programming distributor's duty to negotiate in good faith as set forth in § 76.1301(e)(1):

(i) Refusal by the multichannel video programming distributor to negotiate for carriage;

(ii) Refusal by the multichannel video programming distributor to designate a representative with authority to make binding representations on carriage;

(iii) Refusal by the multichannel video programming distributor to meet and negotiate for carriage at reasonable times and locations, or acting in a manner that unreasonably delays carriage negotiations;

(iv) Refusal by the multichannel video programming distributor to put forth more than a single, unilateral proposal;

(v) Failure of the multichannel video programming distributor to respond to a carriage proposal of the other party, including the reasons for the rejection of any such proposal;

(vi) Execution by the multichannel video programming distributor of an agreement with any party, a term or condition of which, requires that the multichannel video programming distributor not enter into a carriage agreement with an unaffiliated video programming vendor; and

(vii) Refusal by the multichannel video programming distributor to execute a written carriage agreement that sets forth the full understanding of the unaffiliated video programming vendor and the multichannel video programming distributor.

(4) In addition to the standards set forth in § 76.1301(e)(3), an unaffiliated video programming vendor may demonstrate, based on the totality of the circumstances of a particular carriage negotiation, that a multichannel video programming distributor breached its duty to negotiate in good faith as set forth in § 76.1301(e)(1).

3. Section 76.1302 is amended by revising paragraphs (c) through (g) and by adding paragraphs (h) through (l) to read as follows:

§ 76.1302 Carriage agreement proceedings.

* * * * *

(c) *Contents of complaint.* In addition to the requirements of § 76.7, a carriage agreement complaint shall contain:

(1) Whether the complainant is a multichannel video programming distributor or video programming vendor, and, in the case of a multichannel video programming distributor, identify the type of multichannel video programming distributor, the address and telephone number of the complainant, what type of multichannel video programming distributor the defendant is, and the address and telephone number of each defendant;

(2) Evidence that supports complainant's belief that the defendant, where necessary, meets the attribution standards for application of the carriage agreement regulations;

(3) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (b) of this section has been made.

(4)(i) In a case where recovery of damages is sought, the complaint shall contain a clear and unequivocal request for damages and appropriate allegations in support of such claim in accordance with the requirements of paragraph (c)(4)(iii) of this section.

(ii) Damages will not be awarded upon a complaint unless specifically requested. Damages may be awarded if the complaint complies fully with the requirement of paragraph (c)(4)(iii) of this section where the defendant knew, or should have known that it was engaging in conduct violative of section 616.

(iii) In all cases in which recovery of damages is sought, the complainant shall include within, or as an attachment to, the complaint, either:

(A) A computation of each and every category of damages for which recovery is sought, along with an identification of all relevant documents and materials or such other evidence to be used by the complainant to determine the amount of such damages; or

(B) An explanation of:

(*1*) The information not in the possession of the complaining party that is necessary to develop a detailed computation of damages;

(*2*) The reason such information is unavailable to the complaining party;

(*3*) The factual basis the complainant has for believing that such evidence of damages exists; and

(*4*) A detailed outline of the methodology that would be used to create a computation of damages when such evidence is available.

(d) *Prima facie case.* In order to establish a *prima facie* case of a violation of § 76.1301, the complaint must contain evidence of the following:

(1) The complainant is a video programming vendor as defined in section 616(b) of the Communications Act of 1934, as amended, and § 76.1300(e) or a multichannel video programming distributor as defined in section 602(13) of the Communications Act of 1934, as amended, and § 76.1300(d);

(2) The defendant is a multichannel video programming distributor as defined in section 602(13) of the Communications Act of 1934, as amended, and § 76.1300(d); and

(3) (i) *Financial interest.* In a complaint alleging a violation of § 76.1301(a), documentary evidence or testimonial evidence (supported by an affidavit from a representative of the complainant) that supports the claim that the defendant required a financial interest in any program service as a condition for carriage on one or more of such defendant's systems.

(ii) *Exclusive rights.* In a complaint alleging a violation of § 76.1301(b), documentary evidence or testimonial evidence (supported by an affidavit from a representative of the complainant) that supports the claim that the defendant coerced a video

programming vendor to provide, or retaliated against such a vendor for failing to provide, exclusive rights against any other multichannel video programming distributor as a condition for carriage on a system.

(iii) *Discrimination.* In a complaint alleging a violation of § 76.1301(c):

(A) Evidence that the conduct alleged has the effect of unreasonably restraining the ability of an unaffiliated video programming vendor to compete fairly; and

(B)(*1*) Documentary evidence or testimonial evidence (supported by an affidavit from a representative of the complainant) that supports the claim that the defendant discriminated in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors; or

(*2*)(*i*) Evidence that the complainant provides video programming that is similarly situated to video programming provided by a video programming vendor affiliated (as defined in § 76.1300(a)) with the defendant multichannel video programming distributor or with another multichannel video programming distributor, based on a combination of factors, such as genre, ratings, license fee, target audience, target advertisers, target programming, and other factors; and

(*ii*) Evidence that the defendant multichannel video programming distributor is affiliated (as defined in § 76.1300(a)) with any video programming vendor and has treated the video programming provided by the complainant differently than the similarly situated, affiliated video programming described in paragraph (d)(3)(iii)(B)(*2*)(*i*) of this section with respect to the selection, terms, or conditions for carriage.

(iv) *Retaliation.* In a complaint alleging a violation of § 76.1301(d):

(A) Evidence that the conduct alleged has the effect of unreasonably restraining the ability of the complainant to compete fairly; and

(B)(*1*) Documentary evidence or testimonial evidence (supported by an affidavit from a representative of the complainant) that supports the claim that the defendant retaliated against the complainant for filing a complaint with the Commission alleging a violation of § 76.1301; or

(*2*)(*i*) Evidence that the defendant multichannel video programming distributor has taken an adverse carriage action while the complainant has pending with the Commission a complaint alleging a violation of § 76.1301 (the ''initial complaint'') or within two years after the initial complaint is resolved on the merits.

(*ii*) An ''adverse carriage action'' for purposes of paragraph (d)(3)(iv)(B)(*2*)(*i*) of this section is any action taken by the defendant multichannel video programming distributor with respect to any video programming affiliated with the complainant that adversely impacts the complainant, including, but not limited to, refusing to carry any video programming affiliated with the complainant or moving any video programming affiliated with the complainant to a less favorable channel position or tier, provided that an ''adverse carriage action'' does not include the action at issue in the initial complaint.

(v) *Bad faith negotiations.* In a complaint alleging a violation of § 76.1301(e):

(A) Evidence that the conduct alleged has the effect of unreasonably restraining the ability of the complainant to compete fairly;

(B) Evidence that the complainant provides video programming that is similarly situated to video programming provided by a video programming vendor affiliated (as defined in § 76.1300(a)) with the defendant multichannel video programming distributor based on a combination of factors, such as genre, ratings, license fee, target audience, target advertisers, target programming, and other factors; and

(C) Evidence that the defendant multichannel video programming distributor breached its duty to negotiate in good faith pursuant to § 76.1301(e).

(e) *Answer.* (1) Any multichannel video programming distributor upon which a carriage agreement complaint is served under this section shall answer within sixty (60) days of service of the complaint, unless otherwise directed by the Commission.

(2) The answer shall address the relief requested in the complaint, including legal and documentary support, for such response, and may include an alternative relief proposal without any prejudice to any denials or defenses raised.

(3) To the extent that a defendant expressly references and relies upon a document or documents in asserting a defense or responding to a material allegation, such document or documents shall be included as part of the answer.

(f) *Reply.* Within twenty (20) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

(g) *Prima facie determination.* (1) Within sixty (60) calendar days after the complainant's reply to the defendant's answer is filed (or the date on which the reply would be due if none is filed), the Chief, Media Bureau shall release a decision determining whether the complainant has established a *prima facie* case of a violation of § 76.1301.

(2) The Chief, Media Bureau may toll the sixty (60)-calendar-day deadline under the following circumstances:

(i) If the complainant and defendant jointly request that the Chief, Media Bureau toll these deadlines in order to pursue settlement discussions or alternative dispute resolution or for any other reason that the complainant and defendant mutually agree justifies tolling; or

(ii) If complying with the deadline would violate the due process rights of a party or would be inconsistent with fundamental fairness.

(3) A finding that the complainant has established a *prima facie* case of a violation of § 76.1301 means that the complainant has provided sufficient evidence in its complaint to allow the case to proceed to a ruling on the merits.

(4) If the Chief, Media Bureau finds that the complainant has not established a *prima facie* case of a violation of § 76.1301, the Chief, Media Bureau will dismiss the complaint.

(h) *Time limit on filing of complaints.* Any complaint filed pursuant to this subsection must be filed within one year of the date on which the alleged violation of the program carriage rules occurred.

(i) *Deadline for decision on the merits.* (1)(i) For program carriage complaints that the Chief, Media Bureau decides on the merits based on the complaint, answer, and reply without discovery, the Chief, Media Bureau shall release a decision on the merits within sixty (60) calendar days after the Chief, Media Bureau's *prima facie* determination.

(ii) For program carriage complaints that the Chief, Media Bureau decides on the merits after discovery, the Chief, Media Bureau shall release a decision on the merits within 150 calendar days after the Chief, Media Bureau's *prima facie* determination.

(iii) The Chief, Media Bureau may toll these deadlines under the following circumstances:

(A) If the complainant and defendant jointly request that the Chief, Media Bureau toll these deadlines in order to pursue settlement discussions or alternative dispute resolution or for any other reason that the complainant and

defendant mutually agree justifies tolling; or

(B) If complying with the deadline would violate the due process rights of a party or would be inconsistent with fundamental fairness.

(2) For program carriage complaints that the Chief, Media Bureau refers to an administrative law judge for an initial decision, the deadlines set forth in § 0.341(f) of this chapter apply.

(j) *Remedies for violations.* (1) *Remedies authorized.* Upon completion of such adjudicatory proceeding, the adjudicator deciding the case on the merits (*i.e.,* either the Chief, Media Bureau or an administrative law judge) shall order appropriate remedies, including, if necessary, mandatory carriage of a video programming vendor's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor's programming. Such order shall set forth a timetable for compliance, and shall become effective upon release, unless the adjudicator rules that the defendant has made a sufficient evidentiary showing that demonstrates that an order of mandatory carriage would require the defendant multichannel video programming distributor to delete existing programming from its system to accommodate carriage of a video programming vendor's programming. In such instances, if the defendant seeks review of the staff, or administrative law judge decision, the order for carriage of a video programming vendor's programming will not become effective unless and until the decision of the staff or administrative law judge is upheld by the Commission. If the Commission upholds the remedy ordered by the staff or administrative law judge in its entirety, the defendant will be required to carry the video programming vendor's programming for an additional period equal to the time elapsed between the staff or administrative law judge decision and the Commission's ruling, on the terms and conditions approved by the Commission.

(2) *Additional sanctions.* The remedies provided in paragraph (j)(1) of this section are in addition to and not in lieu of the sanctions available under title V or any other provision of the Communications Act.

(3) *Submission of final offers.* To assist in ordering an appropriate remedy, the adjudicator has the discretion to order the complainant and the defendant to each submit a final offer for the prices, terms, or conditions in dispute. The adjudicator has the discretion to adopt one of the final offers or to fashion its own remedy.

(4) *Imposition of damages.*

(i) *Bifurcation.* In all cases in which damages are requested, the adjudicator deciding the case on the merits (*i.e.,* either the Chief, Media Bureau or an administrative law judge) may bifurcate the program carriage violation determination from any damage adjudication.

(ii) *Burden of proof.* The burden of proof regarding damages rests with the complainant, who must demonstrate with specificity the damages arising from the program carriage violation. Requests for damages that grossly overstate the amount of damages may result in a determination by the adjudicator that the complainant failed to satisfy its burden of proof to demonstrate with specificity the damages arising from the program carriage violation.

(iii) *Damages adjudication.* (A) The adjudicator may, in its discretion, end adjudication of damages with a written order determining the sufficiency of the damages computation submitted in accordance with paragraph (c)(4)(iii)(A) of this section or the damages computation methodology submitted in accordance with paragraph (c)(4)(iii)(B)(*4*) of this section, modifying such computation or methodology, or requiring the complainant to resubmit such computation or methodology.

(*1*) Where the adjudicator issues a written order approving or modifying a damages computation submitted in accordance with paragraph (c)(4)(iii)(A) of this section, the defendant shall recompense the complainant as directed therein.

(*2*) Where the adjudicator issues a written order approving or modifying a damages computation methodology submitted in accordance with paragraph (c)(4)(iii)(B)(*4*) of this section, the parties shall negotiate in good faith to reach an agreement on the exact amount of damages pursuant to the adjudicator-mandated methodology.

(B) Within thirty (30) days of the issuance of a paragraph (c)(4)(iii)(B)(*4*) of this section damages methodology order, the parties shall submit jointly to the adjudicator either:

(*1*) A statement detailing the parties' agreement as to the amount of damages;

(*2*) A statement that the parties are continuing to negotiate in good faith and a request that the parties be given an extension of time to continue negotiations; or

(*3*) A statement detailing the bases for the continuing dispute and the reasons why no agreement can be reached.

(C)(*1*) In cases in which the parties cannot resolve the amount of damages within a reasonable time period, the adjudicator retains the right to determine the actual amount of damages on its own, or through the procedures described in paragraph (j)(4)(iii)(C)(*2*) of this section.

(*2*) In cases in which the Chief, Media Bureau acts as the adjudicator, issues concerning the amount of damages may be designated by the Chief, Media Bureau for hearing before, or, if the parties agree, submitted for mediation to, an administrative law judge.

(D) Interest on the amount of damages awarded will accrue from either the date indicated in the adjudicator's written order issued pursuant to paragraph (j)(4)(iii)(A)(*1*) of this section or the date agreed upon by the parties as a result of their negotiations pursuant to paragraph (j)(4)(iii)(A)(*2*) of this section. Interest shall be computed at applicable rates published by the Internal Revenue Service for tax refunds.

(k) *Petitions for temporary standstill.* (1) A program carriage complainant seeking renewal of an existing programming contract may file a petition along with its complaint requesting a temporary standstill of the price, terms, and other conditions of the existing programming contract pending resolution of the complaint. To allow for sufficient time to consider the petition for temporary standstill prior to the expiration of the existing programming contract, the petition for temporary standstill and complaint shall be filed no later than thirty (30) days prior to the expiration of the existing programming contract. In addition to the requirements of § 76.7, the complainant shall have the burden of proof to demonstrate the following in its petition:

(i) The complainant is likely to prevail on the merits of its complaint;

(ii) The complainant will suffer irreparable harm absent a stay;

(iii) Grant of a stay will not substantially harm other interested parties; and

(iv) The public interest favors grant of a stay.

(2) The defendant multichannel video programming distributor upon which a petition for temporary standstill is served shall answer within ten (10) days of service of the petition, unless otherwise directed by the Commission.

(3) If the Commission grants the temporary standstill, the adjudicator deciding the case on the merits (*i.e.,* either the Chief, Media Bureau or an administrative law judge) will provide for remedies that are applied as of the expiration date of the previous programming contract. To facilitate the

application of remedies as of the expiration date of the previous programming contract, the adjudicator, after deciding the case on the merits, may request the party seeking to apply the remedies as of the expiration date of the previous programming contract to submit a proposal for such application of remedies pursuant to the procedures set forth in § 76.1302(c)(4)(iii) and 76.1302(j)(4) for requesting damages. An opposition to such a proposal shall be filed within ten (10) days after the proposal is filed. A reply to an opposition shall be filed within five (5) days after the opposition is filed.

(l) *Protective Orders.* In addition to the procedures contained in § 76.9 related to the protection of confidential material, the Commission may issue orders to protect the confidentiality of proprietary information required to be produced for resolution of program carriage complaints. A protective order constitutes both an order of the Commission and an agreement between the party executing the protective order declaration and the party submitting the protected material. The Commission has full authority to fashion appropriate sanctions for violations of its protective orders, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to confidential information in Commission proceedings.

4. Section 76.1303 is added to read as follows:

§ 76.1303 Discovery.

(a) *Procedures.* In addition to the general pleading and discovery rules contained in § 76.7, the following procedures apply to complaints alleging a violation of § 76.1301 in which the Chief, Media Bureau acts as the adjudicator.

(b) *Automatic document production.* Within ten (10) calendar days after the Chief, Media Bureau releases a decision finding that the complainant has established a *prima facie* case of a violation of § 76.1301 and stating that the Chief, Media Bureau will issue a ruling on the merits of the complaint after discovery, each party must provide the following documents to the opposing party:

(1) In a complaint alleging a violation of § 76.1301(a):

(i) All documents relating to carriage or requests for carriage of the video programming at issue in the complaint by the defendant multichannel video programming distributor;

(ii) All documents relating to the defendant multichannel video programming distributor's interest in obtaining or plan to obtain a financial interest in the complainant or the video programming at issue in the complaint; and

(iii) All documents relating to the programming vendor's consideration of whether to provide the defendant multichannel video programming distributor with a financial interest in the complainant or the video programming at issue in the complaint.

(2) In a complaint alleging a violation of § 76.1301(b):

(i) All documents relating to carriage or requests for carriage of the video programming at issue in the complaint by the defendant multichannel video programming distributor;

(ii) All documents relating to the defendant multichannel video programming distributor's interest in obtaining or plan to obtain exclusive rights to the video programming at issue in the complaint; and

(iii) All documents relating to the programming vendor's consideration of whether to provide the defendant multichannel video programming distributor with exclusive rights to the video programming at issue in the complaint.

(3) In a complaint alleging a violation of § 76.1301(c):

(i) All documents relating to the defendant multichannel video programming distributor's carriage decision with respect to the complainant's video programming at issue in the complaint, including the defendant multichannel video programming distributor's reasons for not carrying the video programming or the defendant multichannel video programming distributor's reasons for proposing, rejecting, or accepting specific carriage terms; and the defendant multichannel video programming distributor's evaluation of the video programming;

(ii) All documents comparing, discussing the similarities or differences between, or discussing the extent of competition between the complainant's video programming at issue in the complaint and the allegedly similarly situated, affiliated video programming, including in terms of genre, ratings, license fee, target audience, target advertisers, and target programming;

(iii) All documents relating to the impact of defendant multichannel video programming distributor's carriage decision on the ability of the complainant, the complainant's video programming at issue in the complaint, the defendant multichannel video programming distributor, and the allegedly similarly situated, affiliated video programming to compete, including the impact on subscribership; license fee revenues; advertising revenues; acquisition of advertisers; and acquisition of programming rights;

(iv) For the complainant's video programming at issue in the complaint and the allegedly similarly situated, affiliated video programming, all documents (both internal documents as well as documents received from multichannel video programming distributors, but limited to the ten largest multichannel video programming distributors in terms of subscribers with which the complainant or the affiliated programming vendor have engaged in carriage discussions regarding the video programming) discussing the reasons for the multichannel video programming distributor's carriage decisions with respect to the video programming, including the multichannel video programming distributor's reasons for not carrying the video programming or the multichannel video programming distributor's reasons for proposing, rejecting, or accepting specific carriage terms; and the multichannel video programming distributor's evaluation of the video programming; and

(v) For the complainant's video programming at issue in the complaint and the allegedly similarly situated, affiliated video programming, current affiliation agreements with the ten largest multichannel video programming distributors (including, if not otherwise covered, the defendant multichannel video programming distributor) carrying the video programming in terms of subscribers.

(c) *Party-to-party discovery.* (1) Within twenty (20) calendar days after the Chief, Media Bureau releases a decision finding that the complainant has established a *prima facie* case of a violation of § 76.1301 and stating that the Chief, Media Bureau will issue a ruling on the merits of the complaint after discovery, each party to the complaint may serve requests for discovery directly on the opposing party, and file a copy of the request with the Commission.

(2) Within five (5) calendar days after being served with a discovery request, the respondent may serve directly on the party requesting discovery an objection to any request for discovery that is not in the respondent's control or relevant to the dispute, and file a copy of the objection with the Commission.

(3) Within five (5) calendar days after being served with an objection to a discovery request, the party requesting discovery may serve a reply to the objection directly on the respondent,

and file a copy of the reply with the Commission.

(4) To the extent that a party has objected to a discovery request, the parties shall meet and confer to resolve the dispute. Within forty (40) calendar days after the Chief, Media Bureau releases a decision finding that the complainant has established a *prima facie* case of a violation of § 76.1301 and stating that the Chief, Media Bureau will issue a ruling on the merits of the complaint after discovery, the parties shall file with the Commission a joint proposal for discovery as well as a list of issues pertaining to discovery that have not been resolved.

(5) Until any objection to a discovery request is resolved either by the parties or by the Chief, Media Bureau, the obligation to produce the disputed discovery is suspended.

(6) Unless the parties agree to extend the 150-calendar-day deadline for a decision on the merits by the Chief, Media Bureau set forth in § 76.1302(i)(1)(ii), discovery must conclude within 75 calendar days after the Chief, Media Bureau releases a decision finding that the complainant has established a *prima facie* case of a violation of § 76.1301 and stating that the Chief, Media Bureau will issue a ruling on the merits of the complaint after discovery.

(7) Any party who fails to timely provide discovery requested by the opposing party to which it has not raised an objection as described above, or who fails to respond to a Commission order for discovery, may be deemed in default and an order may be entered in accordance with the allegations contained in the complaint, or the complaint may be dismissed with prejudice.

(8) Unless the parties agree to extend the 150-calendar-day deadline for a decision on the merits by the Chief, Media Bureau set forth in § 76.1302(i)(1)(ii), the parties must submit post-discovery briefs and reply briefs within twenty (20) calendar days and ten (10) calendar days, respectively, after the conclusion of discovery. Such briefs shall summarize the facts and issues presented in the pleadings and other record evidence, including the information exchanged during discovery.

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S. 846/P.L. 112–31

To designate the United States courthouse located at 80 Lafayette Street in Jefferson City, Missouri, as the Christopher S. Bond United States Courthouse. (Sept. 23, 2011; 125 Stat. 360)

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